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Chairman: Mr. Ganeson (Vice-Chairman) ..... (Malaysia)

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In the absence of the Chairman, Mr. Ganeson (Malaysia), Vice-Chairman, took the Chair

The meeting was called to order at 10.40 a.m.

Report of the International Law Commission on the work of its fifty-eighth session (*continued*) (A/61/10)

1. **Mr. Tladi** (South Africa) said the Commission's report on fragmentation of international law reflected the undeniable truth that the problem of fragmentation was a real and practical one, and not merely of academic interest. It arose in part from the mushrooming of so-called "self-contained" regimes. The term "self-contained" should however be avoided, because it implied the complete separation of those regimes, as if they were immune from outside influence. It would be better to refer to "separate" or "specialized" fields of international law. The positive effects of such specialized fields could be seen from the development of international environmental law, through which declarations such as the Rio Declaration on Environment and Development had acquired a greater degree of significance. That explained why the precautionary principle was now generally recognized as part of international law, even outside the ambit of treaty law. The concept of sustainable development, also derived from international environmental law, had likewise extended its reach to include trade law, human rights law, economic law and development law.

2. The Commission had however correctly recognized that fragmentation had its dangers and that they probably outweighed the positive effects. The proliferation of adjudicatory bodies, sometimes with overlapping jurisdictions, had a distinct impact on the integrity of international law. The Commission and the Sixth Committee should therefore remain alert to the institutional problems arising from fragmentation, notwithstanding the decision of the Study Group to the contrary (para. 245 of the report).

3. The World Trade Organization (WTO) had a specialized, perhaps even a "self-contained", regime, probably because of its compulsory adjudicatory procedure. Although WTO dispute settlement bodies had often made reference to article 31, paragraph 3 (c), of the Vienna Convention on the Law of Treaties, those bodies were constrained by their own terms of reference, such as article 7 of the WTO Dispute Settlement Understanding. In the *Beef Hormones* case the WTO Appellate Body, when considering the relationship between the precautionary principle and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), had concluded that the principle could not, "in the absence of a clear textual directive", exempt the panel from applying the terms of the Agreement. Similar arguments had been advanced and accepted before the WTO panel in *EC: Measures Affecting the Approval and Marketing of Biotech Products*. That implied that WTO law could be influenced only to a limited extent by other areas of international law, even by general international law itself. WTO law must therefore be given special attention when studying the impact of specialized fields of international law on the integrity of the system.

4. Turning to the effects of armed conflicts on treaties, he welcomed the decision of the Special Rapporteur to consider including internal armed conflicts within the scope of the draft articles. Internal conflicts were more common in the modern world than international ones and were capable of having the same effects. States should not, of course, be encouraged to avoid their international obligations on account of armed conflict, whether internal or international. Fortunately, draft articles 3 and 4 emphasized that the mere existence of an armed conflict did not result in extinguishing treaty obligations.

5. **Mr. Vargas Carreño** (Chile), commenting on the draft articles on diplomatic protection, welcomed the decision of the Special Rapporteur not to require the beneficiary of diplomatic protection to have "clean hands". International practice showed that more was to be lost than gained from such a requirement.

6. He endorsed the approach of the Special Rapporteur to the topic of reservations to treaties and expressed agreement with the recommendation for a meeting with United Nations human rights experts to discuss issues relating to reservations to human rights treaties. Those treaties were of a special kind and different in many respects from ordinary treaties. That was the view of the Inter-American Court of Human Rights, which had issued an advisory opinion on the matter (The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (arts. 74 and 75), Advisory Opinion OC-2/82). If the funds could be obtained, it would be useful to bring to the meeting experts with wide experience of the question from regional human rights bodies in Europe, the Americas and Africa.

7. Concerning the effects of armed conflicts on treaties, his delegation took the view that the topic was part of the law of treaties, albeit with linkages to international humanitarian law, the prohibition of the use and threat of force in international relations, and the international responsibility of States. However, the norms enshrined in the Vienna Convention on the Law of Treaties, such as those on supervening impossibility of performance, were not sufficient in themselves. If the aim of the topic was to lend stability to treaties, the rule of continuity proposed in draft article 7, paragraph 1, would be fundamental. However, the list of categories of treaties given in draft article 7, paragraph 2, could well be replaced by an annex summarizing State practice and jurisprudence in the matter. The draft should also contain an explicit reference to human rights treaties and those forming part of international humanitarian law.

8. Concerning the obligation to extradite or prosecute (*aut dedere aut judicare*), he endorsed the approach taken by the Special Rapporteur and noted that the Commission, when considering what was then the draft Code of Offences against the Peace and Security of Mankind, had declared that the purpose of that obligation was to ensure that persons responsible for serious crimes were submitted to justice, allowing for their prosecution and effective punishment by the competent jurisdiction. In other words, the intention was to prevent impunity for serious international crimes and to confer jurisdiction to prosecute or extradite on the State where the presumed offender was found. As the Special Rapporteur pointed out, the case could also be referred to an international tribunal. It might be difficult to determine whether the obligation to extradite or prosecute derived from customary international law. In that connection, the Special Rapporteur and the Commission would have to give careful consideration to the question of the exercise of universal criminal jurisdiction and that of determining which of two or more States interested in exercising jurisdiction should have priority. His view in the latter case was that preference should be given to the State on whose territory the crime had been committed.

9. He welcomed the Commission's decision to include in its long-term programme of work the question of extraterritorial jurisdiction. The evident relationship between that topic and the obligation to extradite or prosecute would require coordination between the two Special Rapporteurs.

10. **Mr. Kaewpanya** (Thailand), commenting on the obligation to extradite or prosecute (*aut dedere aut judicare*), said that many States failed either to prosecute or to extradite offenders because they lacked jurisdiction over the offences committed. To ensure that the obligation was complied with in practice, the Commission must consider making universal jurisdiction the basis for it. That would enable States without jurisdiction over the offence or the offender to become seized of the matter. The Commission should also consider situations in which a requested State could not or did not extradite an offender (for instance, those in which the offender was one of its nationals or the offence carried the death penalty in the requesting State). The crimes to which the obligation to extradite or prosecute should apply could be those recognized under customary international law and serious offences relating to aircraft, narcotic drugs and terrorism.

11. **Ms. McIver** (New Zealand), commenting on the topic of reservations to treaties, said that her delegation saw no particular difficulty in the draft guidelines or the commentaries thereto. She looked forward to the Commission's further consideration of the draft guidelines on the definition of the object and purpose of the treaty and the determination of the validity of reservations. The Commission's preliminary conclusions on reservations to normative multilateral treaties, including human rights treaties, adopted at its forty-ninth session, offered a generally satisfactory statement of principles on that subject. She endorsed the recommendation for a meeting with United Nations human rights experts, especially those who had to deal with reservations.

12. She commended the Commission on completing the Guiding Principles on unilateral acts of States. The principles would encourage States to conduct their relations and resolve their disputes through dialogue, while exercising due care in making declarations on which other States might rely. It was clear from the preamble and from draft principle 3 that in some circumstances, a unilateral act might result in a State being bound by its actions even though such might not have been its intent.

13. In dealing with the obligation to extradite or prosecute (*aut dedere aut judicare*), the Special Rapporteur had recognized the need to start from a thorough analysis of the international treaty obligations and national laws bearing upon the obligation. The Commission's further consideration of the topic would,

she hoped, establish a clearer focus for future work on the topic.

14. Welcoming the adoption of the conclusions of the Study Group on fragmentation of international law, she said the Commission's work on the topic was an impressive achievement which contributed to wider understanding of the underlying linkages and overall coherence of the international legal system. The work of the Study Group would help legal advisers to think through and deal with issues of fragmentation. The conclusions were a good example of the valuable non-traditional kinds of work which the Commission might undertake in future.

15. **Ms. Goldsmith** (Australia) commended the work done by the Commission to develop Guiding Principles applicable to unilateral declarations of States capable of creating legal obligations. Her Government had maintained a strong interest in that issue since its involvement in the *Nuclear Tests* cases before the International Court of Justice, when France had unilaterally declared that it would cease atmospheric tests. Her delegation endorsed the view expressed in draft principle 3 that the context in which such declarations were made needed to be taken into account; it was also important to consider the intention behind them and to regard them as binding only if made by an authority vested with the necessary power, as recognized in draft principles 1 and 4. The circumstances in which the revocation of a declaration could be said to be arbitrary would benefit from further clarification.

16. On the topic of reservations to treaties, which had raised some conceptually difficult questions, such as that of concisely defining the object and purpose of a treaty, she welcomed the stipulation in draft guideline 3.1.3 that a reservation must not be incompatible with such object and purpose. It was fitting that the Commission should take into account developments in international law and practice since the drafting of the Vienna Convention on the Law of Treaties.

17. It was not however appropriate for treaty-monitoring bodies to assess the validity of reservations, as suggested in draft guideline 3.2.1; any such assessment made by a treaty-monitoring body would in most cases be an expression of a view on the matter rather than a binding determination. The role of such bodies was to assess a State party's implementation of the treaty concerned and not the basis on which it had become a party thereto. Moreover, giving them such a role would exacerbate the problem of conflicting conclusions being reached by bodies asserting competency in the matter. The requirement in draft guideline 2.1.8 that the depositary should arrive at its own legal view on the nature of a reservation and duly advise States parties went beyond the depositary's role as set out in article 77 of the Vienna Convention on the Law of Treaties. Where, however, the depositary was also a State party to a treaty, it could communicate its views as to the validity of a reservation in its capacity as a State party, but it could not rule thereon. Her delegation therefore recommended that the Commission should consider draft guidelines 3.2.1 and 2.1.8 carefully at its next session.

18. **Mr. Sinaga** (Indonesia) welcomed the opportunity to discuss the various issues raised by the Commission before its draft recommendations became hard law. The principle of *aut dedere aut judicare*, which in general related to crimes within the scope of universal jurisdiction, had been incorporated into many human rights treaties and, in recent times, into conventions to combat terrorism and other transnational crimes. He agreed that the most crucial question in that regard was whether the obligation to extradite or prosecute should be limited to binding treaties or be extended to appropriate customary norms and general principles of law. It was also relevant to note the existence of bilateral arrangements for extradition and the double criminality principle. Some States limited extradition to capital offences or to certain economic crimes, but that limitation could conflict with their obligation to combat crimes by virtue of the universal jurisdiction principle or under international conventions.

19. The draft articles on the effects of armed conflicts on treaties were applicable solely in situations of armed conflict of an international character, in keeping with the wording of draft article 1 and draft article 2, subparagraph (b). Arguments, based on the *Tadić* case, to broaden the scope of application of the draft to include situations of internal conflict, were not convincing.

20. On the topic of responsibility of international organizations, he noted that, as subjects of international law, such organizations had indeed affected the norm-setting rules of international relations in both their collective dealings with member States and their individual dealings with countries with which they concluded agreements. The complexity of the issue was reflected in the fact that few organizations had a supranational structure. A formula should therefore be found that would take account of the different structures of international organizations. As for the draft articles regulating the breach of an international obligation, they should so far as possible be based on the articles on responsibility of States for internationally wrongful acts, supplemented as necessary. That approach would be particularly relevant in determining the subsidiary, and possibly varying degrees of, responsibility of member States in the case of wrongful acts committed by organizations.

21. With regard to shared natural resources, the Commission was prudent to focus for the time being on the issues of non-renewable water in confined groundwater. The 1997 Watercourses Convention should serve as a framework for elaborating further elements of recharging aquifers but should be supplemented by other relevant sources since it had not yet come into force. Upon completion of that study, the Commission could undertake another one to develop principles for oil and natural gas. As one kind of natural resource, the transboundary aquifer should be subject to the national jurisdiction of the aquifer States. His delegation supported draft article 3, which was consistent with General Assembly resolution 1804 (XVII) on permanent sovereignty over natural resources, and agreed that arrangements among aquifer States, whether binding or non-binding, should have priority over any other instrument. It was reasonable to expect States sharing transboundary groundwater to cooperate in its management in view of its vital importance for people living in the border areas. He therefore welcomed the Commission's decision to include in draft article 5 a non-exhaustive list to guide utilization of that vital resource. With regard to draft article 18, States needed more time to reflect on the obligation to share information since it might conflict with national legislation concerning the confidentiality status of certain types of information.

22. In its future work, the Commission should concentrate on issues that were close to completion and select topics, such as extraterritorial jurisdiction, that would complement existing studies.

23. **Mr. Makarewicz** (Poland) noted the limited progress made on the topic "Effects of armed conflicts on treaties" and agreed that the best way forward would be for the Rapporteur to prepare a third report which could, together with the first two reports, form the basis for its future consideration. The work of the Commission so far had rightly focused on whether such conflicts caused relevant treaties to be terminated, suspended or in operation. However, it was also important to consider the question of the legal regime governing treaty issues during armed conflict. In cases of termination, the consequences needed to be determined; in cases of suspension, the consequences needed to be regulated; in cases where the treaties were in operation, their implementation and interpretation needed to be governed by a set of rules; and where new treaties were concluded between belligerents, rules on treaty-making were required.

24. The Vienna Convention on the Law of Treaties should apply to treaty issues arising during armed conflict in view of its article 73, which conferred upon it a residual status, notwithstanding the primacy of more specific rules agreed by the parties involved. The Vienna Convention itself was a prime example of a multilateral law-making treaty whose object and purpose necessarily implied that it should continue to be in operation. The Special Rapporteur's first two reports on the topic suggested that it was not operative on its own. To dispel any confusion, his delegation suggested the inclusion in the draft articles of a more general provision on the applicability of the Vienna Convention, worded along the following lines: "The outbreak of an armed conflict does not affect the operation of the rules established by the Vienna Convention on the Law of Treaties, which continue to govern treaty matters between the belligerent parties and between the belligerent party and a third State, unless such a continuous operation would be incompatible with the present articles". The draft articles under consideration would then become a *lex specialis*, while the Vienna Convention, with which they would thereby be entwined, would preserve its status as *lex generalis*, thus creating a coherent and logical system of the law of treaties applicable in time of peace and in time of war. Upon completion of the current work, the effects on the Vienna Convention of the new regime governing the situation at the outbreak of armed conflict should be clear.

25. As important as it was to consider the effects of armed conflicts on treaties, it was equally so to ascertain the effects of the outbreak of armed conflict on particular provisions of treaties. Attention should accordingly be centred on the character of particular

treaty obligations in order to determine the criteria for their continuous operation during armed conflict. The rules on separability of treaty provisions would need to be taken into account in that connection, to which end article 44 of the Vienna Convention could serve as a framework; however, there might also be a need to introduce more specific provisions applicable in times of armed conflict. A concern with particular treaty obligations rather than, or in addition to, treaties as a whole might help to maintain the principle of *pacta sunt servanda*.

26. On the topic of *aut dedere aut judicare*, the road map proposed by the Special Rapporteur for the Commission's future work was realistic and acceptable. He agreed that the Special Rapporteur should, with the assistance of the secretariat, undertake a systematic study of State practice, focusing on contemporary practice, including national jurisprudence. It was important that Governments respond to the questions addressed to them in chapter III of the Commission's report. Poland, for its part, would communicate the required information as soon as possible.

27. He referred, lastly, to the final report of the Study Group on fragmentation of international law, whose 42 conclusions were of great value for States, as they showed how to treat that phenomenon as a positive element of contemporary international law. He supported the proposal that the finalized analytical study on the topic should be made available on the Commission's website and also published in its *Yearbook*.

28. **Mr. Saradgi** (India) said that, as the topic of the effects of armed conflicts on treaties was closely related to other domains of international law, it was not possible to maintain a strict separation between the law of treaties and other relevant branches of international law. The scope of the topic should be limited to treaties concluded between States and should not include those concluded by international organizations. The definition of "armed conflict" in draft article 2 should be considered independently of its effects on treaties; its scope should be limited to conflicts between States and not extend to internal conflicts. In cases where the operation of a treaty was indirectly affected by an internal conflict, the effects could be dealt with within the framework of the 1969 Vienna Convention on the Law of Treaties. While the intention of the parties was relevant for interpretation of a treaty, such intention was to be determined from its text and from the context in which it had been adopted. All other relevant circumstances should be taken into account in order to determine whether the treaty or some of its provisions could continue to be in force during armed conflict and ascertain the legality of the actions of each of the belligerents.

29. The listing in draft article 7 of categories of treaties regarded as remaining in operation during armed conflict would raise the presumption that treaties outside those categories would automatically lapse. It might therefore be preferable to identify general criteria for determining the types of treaties that would continue to apply during armed conflict; those that could in no circumstances be terminated should be considered separately, while those that could be suspended or terminated during armed conflict should be identified.

30. The obligation to extradite or prosecute was enshrined in many international conventions to which India was a party. While none of them specifically permitted reservations to that obligation, the law of a State party might not allow extradition in the absence of a bilateral extradition treaty. Under Indian law, extradition could be based on a bilateral agreement or multilateral convention or could be determined case by case and could be granted for all offences carrying a penalty of at least one year's imprisonment. Since, however, a prima facie case must first be established, the obligation to prosecute would arise only after it was established that all requirements for extradition had been met.

31. With regard to the topic on fragmentation of international law, he commended the Commission for its work, in particular for the 42 conclusions reached by the Study Group; they should prove very useful to practitioners and legal advisers as guidelines in dealing with the practical consequences of the widening scope and expansion of international law.

32. **Mr. Panahi Azar** (Islamic Republic of Iran), commenting on the draft articles on the effects of armed conflicts on treaties, said that the task of the Commission was to supplement existing international instruments such as the Vienna Convention on the Law of Treaties, the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, and the articles on responsibility of States for

internationally wrongful acts. He agreed with the Special Rapporteur that the topic was not part of the law relating to the use of force. It fell within several domains of international law, including the law of treaties, international humanitarian law, the responsibility of States and self-defence. Military occupation should not be included within the definition of "armed conflict" in draft article 2 (b). Nor should the definition include internal armed conflicts, which would unduly broaden the scope of the term. He noted in that connection that the articles on responsibility of States for internationally wrongful acts already made provision, in chapter V, for circumstances precluding wrongfulness. However, he endorsed the inclusion in draft article 4 of the concept of "the intention of the parties" to treaties. That was a key factor in determining the validity of a treaty in the event of an armed conflict. It could be ascertained from the text of the treaty, including its preamble and annexes, and also from the *travaux préparatoires* of the treaty and the circumstances of its conclusion.

33. Draft article 4 drew no distinction between a State resorting to the unlawful use of force, contrary to the Charter of the United Nations, and a State exercising the inherent right of self-defence. Putting them on an equal footing would be tantamount to recognizing an unlawful act. The Institute of International Law, in its resolution on the effects of armed conflicts on treaties, had decided that States should be entitled to suspend, in whole or in part, the operation of a treaty that was incompatible with their inherent right of self-defence. Such a distinction must be taken into account in the draft articles.

34. To preserve the integrity and continuity of international treaties, draft article 6 should be maintained, either intact or incorporated into draft article 4. The list of categories of treaties in draft article 7 could be reconsidered with a view to identifying common criteria for deciding which treaties should remain in operation during an armed conflict. As one possible criterion, he proposed the insertion in the draft article of obligations *erga omnes*.

35. **Mr. Astraldi** (Italy) said that the Commission seemed to be still grappling with the difficult task of defining the scope of the topic of the obligation to extradite or prosecute, since it touched on issues, such as universal criminal jurisdiction and the definition of international crimes, that would merit discussion as distinct topics in themselves. A priority task in the examination of the topic would be to make a comprehensive survey of the practice relating to treaties containing the obligation to extradite or prosecute.

36. His delegation looked forward to the third report on the effects of armed conflicts on treaties, as the Special Rapporteur had expressed his intention to provide a full analysis of practice to support his preliminary conclusions.

37. The Study Group on fragmentation of international law had developed an impressive set of 42 conclusions on the topic designed to provide state-of-the-art thinking on various issues of considerable theoretical difficulty, with appropriate references to the pertinent legal authorities. Although certain questions might not be directly relevant to the topic of fragmentation and some others would require a more thorough analysis, the conclusions made an important contribution to the unity of international law.

38. **Mr. Lamine** (Algeria) said, with reference to the topic of effects of armed conflicts on treaties, that internal armed conflicts did not directly affect relations between States parties but could have consequences that indirectly affected the performance of the treaty. Such obstacles or hindrances to implementation could be analysed within the framework of the 1969 Vienna Convention on the Law of Treaties. The same was true for conflicts of the "third kind", such as the "war on terrorism", which did not belong within the scope of the current topic. On the other hand, it would be necessary to include military occupations within the definition of armed conflicts, since they often constituted situations of protracted conflict.

39. With regard to draft article 4 on the indicia of susceptibility to termination or suspension of treaties in case of an armed conflict, in addition to the important element of the intention of the parties at the time the treaty had been concluded, it would be useful to consider the object and purpose of the treaty and the particular circumstances of the conflict. In connection with draft article 7, his delegation supported the proposal to replace the list given in paragraph 2 by an annex containing an analysis of State practice and case law.

40. During the previous session of the General Assembly his delegation had welcomed the inclusion of the topic of the obligation to extradite or prosecute in the Commission's agenda. The obligation offered

States the choice of two alternatives, and it was premature to consider a "triple alternative". Crimes defined only in domestic legislation should be excluded from the topic, but his delegation did not understand the point of the suggestion that a distinction should be drawn between crimes recognized under international customary law and crimes defined in treaty instruments (para. 220). The topic also necessitated study of the extradition procedure itself. The limitations to which extradition was subject were reflected in the plethora of sectoral conventions, notably on terrorism. Such limitations should not be allowed to hinder compliance with the obligation. On the question of universal jurisdiction, his delegation shared the Commission's view that the topic should focus on the obligation to extradite or prosecute, even while acknowledging that for some crimes the two concepts existed simultaneously. In such cases performance of the obligation based on universal jurisdiction would necessarily depend on the presence of the person sought in the territory of the forum State, for it was hard to conceive how a State could choose between extradition or prosecution of an individual if that individual was not physically present in its territory. As to form, delegation supported the proposal to elaborate draft articles on the topic.

41. **Ms. Wilcox** (United States of America) said that her delegation encouraged the Commission's continuing contributions in the law of treaties arena through its work on the effects of armed conflicts on treaties. In his second report (A/CN.4/570 and Corr.1) the Special Rapporteur had highlighted many of the questions that required careful study, including the scope of the draft articles, the definition of terms, the question of the parties' intent as to the effect of armed conflict at the time of the conclusion of the treaty and the problems involved in attempting to categorize specific treaties with respect to the effects of armed conflict. It was important to strive for an approach that preserved reasonable continuity of treaty obligations during armed conflict, taking into account particular military necessities. Rigid categorizations of treaties based on the alleged "intent" of the parties should be avoided, since in most instances the parties would not have had any particular intent about what should happen in the case of armed conflict. The most productive approach might be to enumerate the factors that might lead to the conclusion that a treaty or some of its provisions should continue (or be suspended or terminated) in the event of armed conflict.

42. On the topic of the obligation to extradite or prosecute, there were a number of threshold issues to be addressed, including the extent to which customary international law in that area was sufficiently established to warrant codification and progressive development and whether an obligation to extradite or prosecute was recognized outside the context of international conventions. Her delegation agreed with the many others that wanted the Commission to focus on obligations under existing treaties and begin its work with a study of State practice.

43. Her delegation appreciated the academic work done by the Study Group on the many challenging issues of fragmentation of international law, which would certainly stimulate much discussion in the field. However, it remained uneasy with the procedures used in dealing with the topic, including the limited opportunity for Governments to provide comments as the work had moved to a conclusion. Government comment should remain an important element in the Commission's work. Her delegation also had questions about the connection of the conclusions with the much longer analytical study, which appeared not to be a product of the Study Group as a whole. It nevertheless welcomed the Commission's decision to conclude work on the topic with those products, rather than to attempt to develop a more prescriptive set of principles, since it was not a fruitful field for progressive development.

44. **Mr. Wickremasinghe** (United Kingdom) said, with respect to the various problematic issues on which the Special Rapporteur on the effects of armed conflicts on treaties had sought the guidance of the Committee, that in the view of his delegation treaties involving international organizations were best not included in the scope of the topic, since there was a wide variety of international organizations, and it was doubtful whether their specificity and their treaty arrangements could be successfully dealt with. Moreover, the issues arising from armed conflict for international organizations might be very different from those arising for States. With regard to the definition of armed conflict in draft article 2, although the United Kingdom appreciated that internal armed conflicts could have a significant impact on a State's treaty relations, its preliminary view was that internal armed conflicts should be excluded. Article 73 of the Vienna Convention on the Law of Treaties referred only to the "outbreak of hostilities between States". If the topic was generally to be considered as lying within

the law of treaties, it would be consistent for the scope of the study to be limited to international armed conflicts. His delegation agreed with the decision not to abandon the concept of intention in draft article 4. Although there might be practical difficulties in ascertaining the intention of States parties, such problems were not insurmountable and were often of a type encountered by domestic courts. However, the Commission should also take other factors into account, while preserving the integrity of the rules of treaty interpretation in the Vienna Convention. Lastly, his delegation welcomed the decision to revisit draft article 7 to take into account the concerns of States.

45. On the topic of the obligation to extradite or prosecute, the United Kingdom would provide the requested information on national practice in due course. However it questioned why it had been felt necessary to concentrate on that particular aspect of international criminal law, which might have been considered as part of a broader study on jurisdiction, and what relationship it would bear to the topic of extraterritorial jurisdiction in the Commission's long-term programme of work. On the question of scope, while universal criminal jurisdiction might be of some relevance to the current study, it was a separate and distinct topic. Likewise, the current study should not include a review of extradition law or deportation. His delegation supported the suggestion that the study should be limited to the elaboration of secondary norms of international law. It should not cover the transfer of individuals to international criminal courts, since surrender to such bodies was governed by a distinct set of treaty arrangements and legal rules.

46. With regard to the status of the obligation to extradite or prosecute, his delegation was of the view that the obligation arose as a matter of treaty law only and was not a rule of customary international law. Even if the principle was held to have customary status, it would be in relation to a very limited class of crimes. The rule of extradite or prosecute should be viewed as a secondary norm of international law and was certainly not a *jus cogens* rule. Nevertheless, the study could be of potential value to States in the formulation of principles of priority or hierarchy among the different sources of obligations for States and the varying, and sometimes competing, bases of criminal jurisdiction. As to the final form of the output of the topic, it was premature to take a view, but his delegation would urge the Commission to be flexible.

47. The work on the fragmentation of international law had drawn considerable attention and was of interest to Governments, academics and practitioners alike. His delegation welcomed the completion of the analytical study and the Commission's decision to post it on its website, so that it would be available to a wide audience. With regard to the conclusions of the Study Group, the United Kingdom did not consider that the subject matter lent itself to any kind of prescriptive outcome, nor did it view the conclusions as stated as representative of customary international law or necessarily a desirable direction for progressive development. His delegation was concerned that the work had been conducted differently than usual in that Governments had not been given the opportunity to discuss the work as it progressed or to comment on proposals or drafts, and it hoped that in future Governments would be able to contribute to the work of the Commission in the normal manner.

48. **Mr. Mohd Radzi** Harun (Malaysia) said that the Special Rapporteur's formulation of concrete draft articles on effects of armed conflicts on treaties would make it easier to obtain comments and information from States on their contemporary practice. Draft article 1 on scope should be limited to treaties between States. It could be extended to cover treaties being provisionally applied unless the treaty expressly provided otherwise. Clarification would be appreciated on whether States would have the option to opt out of the proposed regime or parts thereof by special exclusion clauses.

49. In relation to draft article 2 on use of terms, the definition of "treaty", if considered necessary, should be consistent with the definition in the 1969 Vienna Convention on the Law of Treaties. If the scope was extended to treaties involving international organizations, the definition under article 2 of the 1986 Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations would have to be incorporated, which might present problems for countries not parties to the 1986 Convention.

50. The Commission need not embark on a comprehensive definition of "armed conflict"; a simple statement that the articles applied to armed conflicts, whether or not there had been a declaration of war, would provide the necessary flexibility to accommodate evolving types of armed conflicts, including internal armed conflicts and military

occupation. However, if a definition was considered necessary, the existing formulation was generally acceptable as a starting point, since it covered the situations recognized by the four 1949 Geneva Conventions and the 1977 Additional Protocols thereto. The definition given by the International Tribunal for the Former Yugoslavia in the *Prosecutor v. Dusko Tadić* case could be used to develop it further. However, the use of the term "hostilities", as in article 73 of the Vienna Convention on the Law of Treaties, instead of "armed conflict" was not desirable, because "hostilities" could apply to a situation that did not reach the level of overt armed conflict.

51. His delegation agreed that draft article 3 should be reformulated for greater clarity but did not support the proposal to replace "ipso facto" by "necessarily"; the two terms were not synonymous and represented a policy choice with substantive impact. The draft article should not rule out the possibility of automatic suspension or termination of a treaty in certain cases, to be treated as exceptions. In order to clarify the position of third States, a study should first be made of customary international law and contemporary State practice on that issue.

52. With regard to draft article 4, the intention of the parties to the conflict at the time of conclusion of the treaty was a relevant factor but might be difficult to ascertain, as States did not generally anticipate armed conflicts or their consequences when negotiating treaties. Malaysia supported the inclusion of other relevant criteria, provided that the order of precedence of such criteria was specified. Clarification would be welcome on how articles 31 and 32 of the Vienna Convention on the Law of Treaties concerning interpretation of treaties could be applied in situations where the treaty was silent on the effects of armed conflict. The suggestion that the legality of the actions of each of the parties should be included as one of the criteria raised the issue of who was to determine legality.

53. His delegation found draft article 5 to be generally acceptable but agreed with the proposal to include a reference to the applicable *lex specialis* and to divide the two paragraphs into separate articles. The proposal to replace the term "competence" with the term "capacity" was appropriate, since "the capacity of States to conclude treaties" was recognized in article 6 of the Vienna Convention on the Law of Treaties, whereas "competence" connoted an element of legal authority that was beyond the powers of the draft article to confer. He agreed with the Special Rapporteur that draft article 6 could be deleted.

54. In relation to draft article 7, his delegation would appreciate an elaboration of the "customary law, or nascent customary law", (para. 209) supporting the list of treaty categories contained in paragraph 2, perhaps applying the methodology used in chapter III of the memorandum by the Secretariat entitled "The effect of armed conflict on treaties: an examination of practice and doctrine" (A/CN.4/550 and Corr.1 and 2). However, in the draft article itself Malaysia would prefer the adoption of a generic approach that identified the relevant factors, so as to allow for greater flexibility, since some treaties might be multi-purpose and might not fall neatly into the demarcated categories.

55. Draft article 8 was generally acceptable, although the suggestion that the concepts of suspension and termination should be dealt with in different articles required clarification. His delegation felt that the treatment of the concepts in articles 42 to 45 of the Vienna Convention on the Law of Treaties need not affect the structure of the draft articles. It agreed with the position stated in draft article 9 favouring the resumption of suspended treaties, although there might be practical difficulties in determining intention at the time the treaty had been concluded; that was another area in which a more detailed analysis of State practice was required. His delegation also agreed in principle on the need for a provision on the legality of the conduct of the parties, addressed in draft article 10, but, again, a more detailed study of contemporary State practice was required.

56. As pointed out in paragraph 6 of the memorandum by the Secretariat (A/CN.4/550 and Corr.1 and 2), effective codification of the topic would require submissions from Governments, particularly concerning their practice after the Second World War. The Commission should prepare a questionnaire identifying the specific areas requiring responses. The working methods of the Special Working Group on the Crime of Aggression were achieving encouraging results and would be a useful model to adopt.

57. Further study was required to determine whether the obligation to extradite or prosecute was a purely treaty-based obligation or a general obligation of customary international law, and, in the latter case, to

specify the extent of that general obligation, in other words, the specific international offences to which it applied. The Commission should strive to canvass the widest possible State practice. Although a detailed analysis of the link between the principle of universal jurisdiction and the obligation to extradite or prosecute would be useful, they were conceptually distinct principles, and the Commission should focus on the latter. Universal jurisdiction enabled the court of any State to try persons for crimes committed outside that State's territory which were not linked to the State by the nationality of the suspect or the victims or by harm to the State's own national interests; the rule had become part of customary international law and was also reflected in treaties, national legislation and jurisprudence in relation to a variety of types of crimes. Under the obligation to extradite or prosecute, the aim of which was to deny safe haven to criminals, a State was required either to exercise jurisdiction (which might include universal jurisdiction in some cases) over an alleged offender of certain categories of crimes or to extradite that person to a State able and willing to prosecute. With the advent of international criminal tribunals, there was another alternative, namely, the surrender of the suspect to such tribunals under the principle of complementarity. Without prejudice to the final form, his delegation supported the proposal to formulate draft rules concerning the concept, structure and operation of the obligation to extradite or prosecute and would provide the Commission with information on its extradition legislation and practice.

58. **Mr. Malpede** (Argentina) said that State bodies and agencies engaged in the formulation, application and interpretation of international legal norms would find much helpful guidance in the Commission's study of the fragmentation of international law (A/CN.4/L.682 and Corr.1 and Add.1 and A/CN.4/L.702) especially as it not only contained a section on case law concerning conflicts between norms but also suggested solutions to certain theoretical issues which had rarely been considered by international courts. The Study Group had been right to focus on five main themes and to use the 1969 Vienna Convention on the Law of Treaties as its point of reference. The conclusions drawn on special (self-contained) regimes were particularly interesting. The Study Group's exposition of systemic integration and of open or evolving concepts merited close attention, as did its examination of the hierarchical relations between norms of international law and the relationship between the decisions of the Organization's principal organs and other norms of international law. The conclusions contained in chapter XII of the Commission's report and the study on which they were based should therefore be widely circulated so as to foster a better understanding of ways to approach fragmentation.

59. **Ms. Spinaru** (Romania) said that codification of the law of transboundary aquifers would contribute significantly to the development of international environmental law. Draft article 4, predicated on stewardship of the planet's resources, was excellent, but the lack of a definition of "precautionary approach" in draft article 11, of "significant harm" in draft article 6 and of "significant adverse effect" in draft article 14 would leave the door open to varying interpretations and would affect the integrity of the whole text. For the same reason, it was necessary to specify what kind of conduct would qualify as "precautionary" and what consequences failure to engage in such conduct would entail. She was curious to know how the Commission would link the subject of aquifers with those of other natural resources such as raw materials, gas and oil. Incorporation of the draft articles in a convention would be the only way to achieve the goals envisaged by the Special Rapporteur.

60. Regarding the topic of responsibility of international organizations, she said that, although self-defence, necessity or distress were circumstances precluding the wrongfulness of acts by States, it was hard to see how they could be applied to international organizations. The Commission should therefore provide examples of instances in which those principles had been extended to cover international organizations. Member States and international organizations held distinct and separate responsibilities. Membership alone was insufficient reason to hold a State responsible for an internationally wrongful act committed by an organization to which it belonged. The State would have to play an active role in the commission of the wrongful act in order to bear responsibility for it. There was no legal basis for requiring member States to pay compensation to an injured party if the organization responsible for the internationally wrongful act was not in a position to do so. A State could, however, as a charitable act, offer, pecuniary remedies for the injured party's sufferings. On the other hand, since some international

instruments contained provisions on cooperation to bring to an end, through lawful means, a serious breach of an obligation under a peremptory norm of international law, it would be worth incorporating such a provision in the draft articles on responsibility of international organizations.

61. As far as reservations to treaties were concerned, reservations to normative treaties, including human rights treaties, should be subject to the same rules as reservations to other types of treaties. While it was imperative to abide strictly by the whole body of human rights standards, no attempt should be made to establish a hierarchy of international legal norms according to their subject matter. The monitoring bodies referred to in draft guidelines 3.2.1 and 3.2.2, should be entrusted with the task of ruling on the status and consequences of a particular reservation, because national monitoring bodies were normally responsible for supervising the implementation of conventions and a reservation could be regarded as an exception to the applicability of a convention. The most important criterion for evaluating the permissibility of a reservation was the intention of States when the treaty was concluded. If the convention was silent on the matter of reservations, their permissibility should be judged in the light of the object and purpose of the treaty.

62. The ten Guiding Principles which constituted the final product of the Commission's work on the topic of unilateral acts of States would be of great value as a guide to international-law practitioners.

63. With respect to the draft articles on effects of armed conflicts on treaties, she observed that the definition of "treaty" should reflect the fact that international organizations could conclude treaties. For the purposes of the draft articles, the term "armed conflict" should be understood to cover non-international armed conflicts because, over the past twenty years, most armed conflicts had been internal. In draft article 3, the expression "necessarily" would best convey the idea that some armed conflicts would lead to the termination or suspension of treaties, while others would not. The main criterion for determining if that was the case should be the parties' intention upon conclusion of the treaty. Any listing in draft article 7 of categories of treaties which would remain in operation during an armed conflict would be open to a variety of interpretations which would detract from the substance of the whole topic.

64. In response to the Commission's questions regarding the topic of *aut dedere aut judicare*, she said that, under the law of her country, Romanian citizens and persons who had been granted political asylum could not be extradited. Exceptions to that rule were allowed, but only on certain conditions and only in accordance with the international conventions ratified by Romania. If the extradition of someone from those two categories of persons was refused and if the requesting State so desired, the case had to be brought before the competent Romanian authorities with a view to the commencement of legal proceedings. If the extradition of a foreign citizen was refused, criminal proceedings were initiated immediately subject to certain conditions. Thus, in Romania, the obligation to extradite or prosecute applied differently to nationals and foreign citizens. In practice, the authorities of her country had so far granted all the requests they had received for the extradition of foreign citizens, but they had preferred to try Romanian citizens before the national courts.

65. The *aut dedere aut judicare* obligation was to be found in various international treaties and it had started to shape States' conduct with regard to the most heinous international crimes. Any study of the topic should be confined to the "double alternative" and should disregard the third possibility of handing over the perpetrators of international crimes to international tribunals.

66. The Study Group exploring the topic of fragmentation of international law had produced a fascinating and thought-provoking report which should prove to be a useful tool for international legal practitioners.

67. **Mr. Kanu** (Sierra Leone) said that, while to most of the draft articles on diplomatic protection adopted by the Commission merited support, draft article 18 was silent on the protection available to the crew of a ship which had connections with several States. If a crew member of one such ship was injured, against which country should the action be brought? In which forum must he exhaust local remedies? His delegation believed that, given the unresolved problems, the time was not yet ripe for drawing up a convention on the basis of the draft articles.

68. Caution was needed if the draft articles on responsibility of international organizations were to be modelled on the articles on State responsibility for

internationally wrongful acts, because the nature and character of international organizations differed from those of States. Draft articles 17 to 24 on State responsibility could not therefore be applied by analogy to organizations. While he welcomed the tenor of draft articles 28 and 29, he believed that the Commission should also consider situations in which States were not deemed responsible for the acts of organizations. Moreover, there was no legal basis for an obligation on the part of States to pay compensation for an internationally wrongful act of an organization to which it belonged, if the organization was not in a position to do so.

69. He commended the work done by the Special Rapporteur on the topic of the fragmentation of international law and welcomed the Commission's conclusions on that subject. Although fragmentation had negative and positive effects on the application of the principles of international law, article 31 of the 1969 Vienna Convention on the Law of Treaties provided international lawyers with an invaluable instrument for reconciling the different rules resulting from diversification. The recommendation made in paragraph (42) of the Study Group's conclusions (A/CN.4/L.702) was sensible in the current circumstances.

70. The Commission had adopted an excessively narrow approach to the topic of effects of armed conflicts on treaties by considering only the impact of international armed conflicts and failing to examine situations in which there was international involvement in ostensibly national conflicts. Such exclusion would have adverse repercussions on its future work.

71. Turning to the topic of *aut dedere aut judicare*, he encouraged the Commission to draw a distinction between the principle of universal jurisdiction and that of *aut dedere aut judicare* and to pinpoint the similarities and differences between them. Furthermore it should offer States guidance as to whether they should extradite or prosecute. If *aut dedere aut judicare* was not an obligation under customary international law, what was its legal basis? The Commission should endeavour to provide an answer to that question. His own Government would face substantial difficulties if it had to apply that principle in its national courts, as Sierra Leone was a party to many international treaties which had to be incorporated into national law before they could be relied upon in court. His Government was currently being assisted by the United Kingdom and the Commonwealth with the passing of such legislation, and it looked forward to the time in the not too distant future when it would be in a position to extradite or prosecute the perpetrators of crimes which offended the conscience of humanity.

72. He proposed three topics for consideration by the Commission: the legal consequences arising out of the use of private armies in internal conflicts; the legal consequences arising out of the involvement of multilateral corporations in internal conflicts; and the legal consequences arising out of the involvement of security agencies in internal conflicts. The recent experiences of his own country and of Liberia and the Democratic Republic of the Congo warranted the consideration of those topics by the Commission. The 1949 Geneva Conventions and the Additional Protocols thereto were signed by States. It was therefore unclear if and to what extent they applied to the entities he had just mentioned.

73. **Mr. Pambou-Tchivounda** (Chairman of the International Law Commission) said that the Commission looked to the Sixth Committee in order to obtain Governments' reactions to the general thrust of its work and, more specifically, to the various issues raised by the topics on its agenda. He therefore requested that Governments should forward their written comments on the first-reading version of the draft articles on shared natural resources and their replies to the diverse questions put in chapter III of the Commission's report.

The meeting rose at 1.15 p.m.

United Nations A/C.6/61/SR.20

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Chairman: Mr. Gómez Robledo ..... (Mexico)

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06-60305 (E)

The meeting was called to order at 11 a.m.

Agenda item 80: The rule of law at the national and international levels (*continued*) (A/61/142)

1. **Ms. Kamenkova** (Belarus) said that the rule of law was a crucial issue, not only for States which had recently suffered from armed conflicts, but for all States Members of the United Nations. A rapid solution by the international community as a whole was therefore required and the United Nations was the best possible forum for finding such a solution. A resolution on the topic might contain the following points: reaffirmation of the integrity of the norms and principles of the Charter of the United Nations, the primacy of international law in the resolution of international issues and the role of multilateralism in strengthening the rule of law at the international level; the fact that the Office of Legal Affairs must assist States in their implementation of key international agreements adopted under the auspices of the United Nations; encouragement of the more active use of the institution of advisory opinions from the International Court of Justice on the application of the norms of international law; further consideration in the Sixth Committee of draft articles prepared by the International Law Commission, with a view to giving them the appropriate form in international law; the forging of much closer links between the legal services of the United Nations and other United Nations organs, programmes and funds, as well as with international financial institutions; encouragement of the holding of seminars and conferences and the implementation of other measures to disseminate a knowledge of international law, including, possibly, the convening of a congress on international law or the rule of law; and backing for the Secretariat's efforts to publish a handbook on the practice of the Security Council and other United Nations organs. In supporting such a resolution, her Government proceeded on the assumption that the Sixth Committee would continue to consider the international legal aspects of topics and would not encroach on the competence of the Peacebuilding Commission or of other United Nations organs.

2. While the Secretary-General's initiative to set up a unit within the Secretariat to further the principle of the rule of law was welcome, the establishment of the Peacebuilding Commission, as a new organ in the United Nations system, must not adversely affect the work of the existing legal organs of the Organization, or result in the senseless duplication of work. If no consensus was reached on the issue at the current session, it should be included in the agenda of the General Assembly's sixty-second session.

3. **Ms. Salasini** (Zambia) said that justice, peace, sustainable development and good governance were all interdependent and they, together with mechanisms and institutions to secure their efficacy, formed the rule of law. Respect for the latter at both the national and international levels was of great importance. The constitution of her country derived its validity from the rule of law and the purpose of several national institutions was to make sure that democratic practices prevailed and that human rights obligations were fulfilled at all times.

4. At the international level, her Government wished to join other members of the international community in ensuring that respect for the rule of law was upheld. Recognition of the jurisdiction of the International Criminal Court and of the tribunals for the former Yugoslavia and Rwanda would reaffirm the collective will to end impunity for serious violations of international law. If the rule of law was disregarded, treaties would become redundant. After signature and ratification, the provisions of treaties should be incorporated into national law, as only by championing the rule of law could Member States foster world peace and development. Since the rule of law encompassed many aspects, particular topics should be selected for discussion in meaningful and practical debates.

5. **Ms. Wilcox** (United States of America) said that international law was of great value; her Government had therefore worked actively to expand its dialogue with other countries on international law issues. Stability and order in international relations and cooperation among States when addressing common challenges were important objectives which ought to be borne in mind when the Sixth Committee considered means of consolidating the rule of law.

6. States must honour the obligations they accepted under bilateral and multilateral treaties. To that end, they ought to take a number of steps before and after becoming parties to treaties: they must carefully analyse treaty texts during their negotiation to ensure that they would be able to comply with them, since respect for international law was ill-served if States concluded agreements which they were unable to

implement. States must also consider what changes would have to be made to domestic laws to permit compliance with the treaty obligations they intended to assume and consider making such changes before becoming a party to the treaty.

7. Once treaties had entered into force, the parties to them should discuss measures that might be taken to promote effective compliance. When considering the role it might play in that area, the Sixth Committee must take care not to duplicate those efforts. In addition, it was necessary to recall the importance the Charter attached to the peaceful settlement of disputes among States and of the major contribution international courts and tribunals could make in that respect. Such courts and tribunals were most effective and commanded the respect and confidence of States when they provided neutral, depoliticized forums for resolving disputes and when they operated efficiently. Efforts to strengthen existing dispute settlement mechanisms would be most useful if they focused on ways of attaining those objectives.

8. If a specific topic under the general heading of the rule of law were to be selected for consideration at the next session of the General Assembly, it should have a practical focus and provide a basis for constructive deliberation. One such topic would be ways in which existing United Nations activities and strategies for technical assistance related to the rule of law might be better coordinated and rendered more effective.

9. Her delegation supported the proposal that the Secretary-General should be asked to prepare a report on current United Nations rule of law activities, provided that the report was limited to factual information and did not address the steps taken by individual States to implement the rule of law, or contain any recommendations on the steps States should take in that regard. It would be more appropriate for any proposals on those topics to be generated by members of the Sixth Committee. Moreover the preparation of such a report could be supported only if did not require additional resources.

10. **Mr. Sinaga** (Indonesia) said that the rule of law laid the foundation for good governance, worldwide prosperity and peaceful coexistence and cooperation among States. International law was an instrument for achieving those objectives, because it defined acceptable standards of behaviour within the international system.

11. At the national level, the rule of law guaranteed peace and stability and fostered good governance and sustainable socio-economic development. For that reason, it was vital that all components of society, including Governments, should respect and promote the rule of law in order to secure prosperity and justice for all. The rule of law was also of tremendous significance to relations among States, since a rule-based international system underpinned the principle of equality among States before the law, ensured the stability essential for cooperation among them and made for predictability in inter-State relationships.

12. A number of institutions had been established within the framework of the United Nations to promote the rule of law, the most relevant being the judicial mechanisms for settling disputes among Member States, particularly the International Court of Justice. The additional judicial bodies which had been created would give States more options for settling differences amicably. It was a remarkable testament to the will of States to regulate their collective conduct that they generally abided by the decisions of those judicial institutions. That adherence in turn promoted further respect for justice and the rule of law in inter-State affairs. In that connection, he therefore looked forward to the operation of the voluntary trust fund to assist States in their legal proceedings before the International Court of Justice.

13. The International Law Commission and the United Nations Commission on International Trade Law, by making a major contribution to the progressive development and codification of international law, both constituted pillars of the rule of law. The Sixth Committee could further the process by examining the recommendations of those institutions and turning them into conventions or declarations of legal principles to govern the conduct of States.

14. Globalization made the harmonization of national laws all the more essential. The United Nations could do much to provide States with practical assistance in their endeavours to incorporate international law into municipal law. A rule of law assistance unit mandated to help States with capacity-building could reinforce coordination among a variety of bodies with a view to securing universal adherence to international law.

15. The General Assembly, which provided a forum for the universal, comprehensive and coordinated consideration of the rule of law, should develop a strategy enabling it to focus on specific issues. While the Security Council had been right to scrutinize certain aspects of international law, particularly in a post-conflict context, as part of its responsibility for maintaining peace and security, the General Assembly, as the most representative legislative organ of the United Nations, should assume the leading role in deliberating all the facets of the rule of law influencing inter-State relations. The International Court of Justice, through advisory opinions, must clarify the Charter-based mandate of the Organization's principal organs, which was the subject of diverging views. The topic under consideration should therefore be included in the agenda of future sessions.

16. **Mr. Abdelsalam** (Sudan) commended the methodology chosen by the Bureau of the Sixth Committee to reflect on such an important issue as the rule of law, but said that it was premature to request a report on the topic by the Secretary-General, since time was still needed for a thorough examination of all aspects of the matter. First, a road map was needed, setting out the Committee's ideas, areas of interest and priorities, which would then form the basis of a report by the Secretariat containing recommendations. Members should guide the debate and indicate what they wanted to see in the report. The whole discussion should be conducted in an open-ended ad hoc committee. Delegations should be allowed ample time to consult their Governments. The topic was new and therefore called for a holistic approach. As many of the related issues were interlinked and needed to be discussed together, it was also too early for a thematic debate.

17. **Mr. Shah** (Pakistan) said the interest shown by Member States in the topic during informal discussion boded well for the success of the initiative by the delegations of Liechtenstein and Mexico. It was a significant challenge to select topics for the sixty-second session of the General Assembly. His own delegation urged that the proposal before the Committee be handled in a fair and transparent manner, and that all the suggested topics be made known to Member States. Pakistan was in favour of establishing an ad hoc committee to deal with the organization of work on the question. It also had a special interest in the role of the International Court of Justice in the settlement of international disputes, and he hoped that would be actively considered as a topic for future discussion.

18. **Mr. Elji** (Syrian Arab Republic) said it was a matter of urgency for the General Assembly to discuss the question of the rule of law at the international level. The question had already been discussed by the Security Council, thus violating the authority and usurping the role of the General Assembly. The 2005 World Summit Outcome had focused attention on the rule of law at the national and international levels, and its importance had been further highlighted by recent events involving the use or threat of force and the occupation of territory. Thousands of years earlier, Arab civilization had sown the seeds of the rule of law with the Hammurabi Code and the Phoenician laws. Relations between the Hittites of Syria and the Egyptian Pharaohs had been regulated by treaty. Islamic civilization had led to the promulgation of many laws to govern different aspects of life, including the rules of good governance and policing. At the international level, Islamic law recognized the precepts of humanitarian law. International law had continued to develop throughout history, adapting to the characteristics of different societies. The Sixth Committee should focus on ways of developing systems for providing to countries, at their request and within the framework of the United Nations, financial and technical assistance that took their special characteristics into account.

19. The United Nations, as the guardian of the rule of law, had to establish conditions to ensure that international justice prevailed and that obligations were complied with in accordance with its Charter. The General Assembly and the Sixth Committee operated together to promote the rule of law internationally through codification and the promulgation of international treaties. The International Law Commission, by developing rules of law, played an important role in facilitating the work of the General Assembly. The Security Council and the International Court of Justice both played important roles in coordinating action by States to give effect to the rule of law. However, much remained to be done to ensure that legality prevailed in international relations, because currently the will of the strongest was imposed on the weakest. At the national level, there were rules to ensure the equality of rights and obligations, but at the international level the sovereign equality of States

was no more than an abstract principle, because the Security Council frequently interfered in matters within the purview of the General Assembly. Its decision-making was selective and often based on double standards. As for the International Court of Justice, its dispute settlement procedures were flawed by being derived from a voluntary mechanism.

20. Respect for the Charter of the United Nations was a key test of the rule of law at the international level. The Charter was, however, violated in a unique way in the Arab region, through the continued occupation of Arab territories, ongoing aggression, and the violation of basic freedoms, notwithstanding the resolutions of the General Assembly and the Security Council and the advisory opinion of the International Court of Justice on the construction of a wall in occupied Palestinian territory. That situation demonstrated clearly the weakness of the rule of law at the international level, which had much to do with one of the permanent members of the Security Council. When the Security Council acted under Chapter VII of the Charter its decisions must comply with the principles of international law, and the International Court should monitor its work in that regard.

21. **Mr. Dolatyar** (Islamic Republic of Iran) welcomed the timely initiative by the delegations of Liechtenstein and Mexico. He would also welcome the establishment of an ad hoc group to discuss the proposal. However, the proposal as set out in the explanatory memorandum attached to document A/61/142 needed further refinement and consultations should be held for that purpose. It might be premature to call for a report by the Secretary-General at the current stage.

22. **Ms. Negm** (Egypt) welcomed the inclusion of the proposal in the Committee's agenda. She agreed with the representative of the Sudan that discussion of the item should be conducted with the utmost transparency. Her delegation was prepared to engage in constructive discussion to determine which purposes the proposed topic was intended to achieve. It would, however, be premature to request a report from the Secretary-General without first seeking the views of Member States.

Agenda item 33: Comprehensive review of the whole question of peacekeeping operations in all their aspects (A/60/980)

23. **The Chairman** drew attention to the note by the Secretary-General (A/60/980), containing the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations.

24. **Mr. Talbot** (Guyana), speaking on behalf of the countries of the Rio Group, welcomed the recommendations of the Group of Legal Experts, including the possible elaboration of a convention to address jurisdiction and other issues relating to the accountability of United Nations staff and experts on mission. He paid tribute to the work of the numerous men and women, almost 100,000 in all, who put their lives at risk in peacekeeping operations. He recognized that a small minority of peacekeepers had involved themselves in abhorrent acts warranting the most serious attention. He strongly supported efforts to ensure that the misconduct of a few people did not compromise the credibility of the United Nations and its peacekeeping operations. The policy of zero tolerance, especially for sexual abuse and exploitation, must apply to all the personnel of peacekeeping missions, whether military, police or civilians. Member States and the Secretariat must act together in a decisive manner, taking firm measures to prevent abuse and exploitation and to enforce United Nations standards of conduct in peacekeeping missions. Their efforts must be guided by the principles that no wrongful act should be left unpunished, and that due process of law should apply to every person involved.

25. He emphasized the value of comprehensive training for mission personnel in the required standards of conduct at the time of induction and throughout the mission assignment. Steps should be taken to incorporate measures against misconduct into legal documents signed between the United Nations and troop-contributing countries, bearing in mind that criminal and disciplinary responsibility for members of military contingents remained within the exclusive jurisdiction of those countries.

26. In view of the difficulty of gathering sufficient evidence for prosecution under the applicable substantive and procedural law, the countries of the Rio Group were convinced that the host country, the United

Nations and the troop-contributing countries should cooperate closely in investigating those accused of misconduct. That would require the effective strengthening of the Office of Internal Oversight Services, in accordance with General Assembly resolution 59/287. Investigators must comply fully with the principles of impartiality and fairness. Evidence must be properly gathered and efficient reporting channels must be made available. The Rio Group emphasized the need for close coordination between the relevant United Nations offices, especially the Department of Peacekeeping Operations, the Office of Legal Affairs and the Office of Internal Oversight Services. The utmost transparency must be observed towards the troop-contributing countries. The Rio Group supported the concept of a National Investigation Officer (NIO) in relation to members of military contingents.

27. **Mr. Playle** (Australia), speaking on behalf of the CANZ group (Australia, Canada and New Zealand), said that the group had contributed to many United Nations peacekeeping operations and was, therefore, greatly concerned when those operations were undermined by the criminal acts of a few. He commended the measures taken to prevent peacekeeping personnel from committing crimes; when prevention failed, however, offenders must not enjoy impunity. He welcomed the proposal that the draft model Memorandum of Understanding between troop-contributing countries and the United Nations should include a specific requirement that such countries should investigate and prosecute any crimes committed by their personnel.

28. The CANZ group supported measures to remove obstacles to the accountability of peacekeeping personnel but wished to reflect further on the specific recommendations set out in the report of the Group of Legal Experts (A/60/980). The role of the Sixth Committee in that regard should be to focus on the recommendations contained in section IV on jurisdiction of States other than the host State and, in particular, issues relating to the draft convention annexed to the report.

29. The CANZ countries were as yet undecided about the desirability of such a convention. As proposed in the report, it would oblige States parties to extradite or prosecute United Nations officials or experts who committed serious crimes in the context of a United Nations peacekeeping operation, but it would not affect the immunities they enjoyed under the Convention on the Privileges and Immunities of the United Nations, in particular immunity from legal process for acts committed by such personnel in the performance of their duties, which could only be waived by the Secretary-General. The Convention would not cover military personnel of national contingents assigned to the military component of a peacekeeping operation and would apply only to "serious crimes". The group had proposed two possible definitions of such crimes, and there should be immediate agreement that no impunity could be permitted for the crimes covered by either definition. The draft convention provided for the possibility of criminal proceedings being instituted in the host State; where necessary, capacity-building measures might be taken to that end, but the other options contemplated should also be explored, such as prosecution by the State of nationality of the alleged offender or by the State in which the offender was located. The CANZ countries, for their part, had enacted laws to cover crimes committed overseas by their respective nationals and had systems to investigate misconduct by their police and military officers, wherever it took place. He urged all States to consider enacting similar laws to cover crimes that might be committed extra-territorially by their nationals during peacekeeping operations. United Nations officials and experts must be held accountable for any serious crimes committed in the field and must be seen by the host State and its people to be brought to justice, but at the same time care should be taken to ensure respect for their human rights.

30. **Ms. Ebrahim** (Kuwait) commended the Special Committee on Peacekeeping Operations and the Group of Legal Experts for their respective reports (A/60/19 and A/60/980) and thanked the Department of Peacekeeping Operations for the vital role it played in the maintenance of international peace and security. Kuwait, which had hosted many peacekeeping operations, notably the United Nations Iraq-Kuwait Observer Mission, supported the principle of the draft convention on the criminal accountability of United Nations officials and experts on mission. Excessive reliance on the immunity of such personnel could result in them not being held criminally accountable for their acts. Codified provisions were therefore needed to guard against that risk.

31. **Mr. Ayua** (Nigeria) said the United Nations peacekeeping operations had earned the trust of many

victims of conflict situations, as was reflected in the support such operations received in the field. Nigeria therefore condemned any acts that threatened the lives or security of peacekeepers; crimes against them must not go unpunished. One of the best ways of showing the necessary continuing support for peacekeeping personnel was to retool the mechanism for consultations between the Security Council, troop-contributing countries and the Department of Peacekeeping Operations so as to take into account the lessons learned and the specific concerns of the troops themselves. New policies would also no doubt benefit from the views of the Special Committee on Peacekeeping Operations.

32. Nigeria had been closely associated with United Nations peacekeeping operations since joining the Organization in 1960 and was an active participant in all related matters. It welcomed the swift action taken by the Secretary-General to address the growing problem of deviant behaviour by peacekeeping personnel, in particular by setting up the Group of Legal Experts which had, inter alia, recommended that a comprehensive policy be developed to guide peacekeepers in the field. The circulation of a handbook of rules for peacekeepers would be especially welcome, not only because it would remove any possible excuses for misconduct but also because it would complement the efforts made by countries to prepare their troops and police for peacekeeping service.

33. His Government associated itself with the Group's recommendations, which could help to secure the rule of law and safeguard the image of the United Nations. The resulting policies should be of universal application and not appear to be directed exclusively against peacekeepers from developing countries. Nigeria firmly supported a zero-tolerance policy by the United Nations towards sexual exploitation and abuse, as would continue to be reflected in its own training programmes for prospective peacekeepers, without infringing upon their fundamental freedoms.

34. **Mr. Amri** (Indonesia) said that the report of the Group of Legal Experts offered a good basis for further reflection on the issues involved. United Nations peacekeepers risked their lives for the sake of peace in conflict zones; international law therefore granted them immunities in the performance of their duties, while States were required to give them maximum protection and bring to justice those who threatened their safety and security. However, the immunities they enjoyed carried an obligation to respect the laws of the host State.

35. His delegation shared the concern about the need to make sure that peacekeepers were held accountable for crimes they committed, in accordance with due process and in keeping with the principle of equality of all before the law. Moreover, justice must be seen to be done, otherwise the credibility of United Nations peacekeepers as a whole could be damaged. For that reason, world leaders had in 2005 supported a zero-tolerance policy for such crimes. His delegation welcomed the range of options proposed in the draft convention for the prosecution of offenders, having regard in particular to the difficulties faced by the legal system of the host State in the wake of a prolonged conflict. However, Governments needed further time to reflect on the draft, which had only just been made available. Over and above the adoption of a legally binding instrument, pre-deployment and ongoing training of peacekeeping personnel should include a warning that their misconduct might amount to criminal conduct, since compliance with certain standards of behaviour was crucial for the credibility of peacekeeping operations on the ground.

36. **Mr. Abdelsalam** (Sudan) said that peacekeeping missions were important mechanisms for assisting countries torn by conflict to implement peace agreements and create the conditions for peace. The United Nations continued to be the best institutional framework for such efforts. With the increasingly frequent use of peacekeeping missions, the Secretary-General had done well to institute an objective evaluation of the mechanism to meet current needs, improve efficiency and address perceived gaps. The report of the Panel on United Nations Peace Operations (A/55/305-S/2000/809) under the chairmanship of Mr. Brahimi had been the first serious analysis of peacekeeping operations, and its recommendations continued to be useful. Experience had shown that the difficult peacekeeping operations undertaken by the United Nations required considerable planning to be effective.

37. The Security Council, in ordering such operations, must ensure that they were not used to serve narrow political interests, and the Department of Peacekeeping Operations must exert its best efforts to ensure that their execution was transparent, effective, free of double standards and in conformity with the

Charter. As the host of one of the largest United Nations peacekeeping operations in the context of the implementation of peace agreements, Sudan was alive to the importance of cooperating with the peacekeeping operations but was also convinced of the need to ensure that the operations were not used as a means to settle scores on political or humanitarian pretexts.

38. With regard to the report of the Group of Legal Experts on ensuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations (A/60/980), his delegation agreed with the Group's view of its mandate as referring to accountability for criminal acts in general and not limited to crimes involving sexual exploitation and abuse. The Secretary-General's bulletin ST/SGB/2003/13 contained a broad definition of acts of sexual exploitation and abuse and discussed the resulting administrative responsibility, but it did not address situations in which such misconduct amounted to criminal conduct. Disparities in national legislation in the definition of criminal conduct should not be allowed to impede an effective judicial response, since it was the role of the United Nations to codify the law in order to harmonize differences between different legal systems. With regard to immunity, a provision should be included in status-of-forces agreements for peacekeeping operations guaranteeing a waiver of immunity in the event that a United Nations staff member committed an offence subject to criminal prosecution. Such a provision would be in keeping with the general principle of international law against impunity.

39. If a member of a peacekeeping mission committed a crime, the host State should have priority jurisdiction. It was not logical to posit that the exercise of jurisdiction could be shared by the host State and other States. If the capacity of the host State was inadequate, it should be strengthened through assistance. The proposal to set up hybrid tribunals would undermine the sovereignty of the host State, and the independence of the judges would be called in question. The report mentioned the possibility that convicted offenders might be transferred to serve their sentences elsewhere if the host State lacked adequate custodial institutions. If such were the case the appropriate solution would be to fill that gap by assisting in the building of detention facilities, rather than undermining the host State's sovereign exercise of its criminal jurisdiction. His delegation also did not see the justification for endowing a peacekeeping operation with a mandate that would allow it to set up a legal system separate from that of the host State.

40. The report mentioned that the international community had accepted that certain crimes were of such gravity that the only effective way of dealing with them was through the establishment of international courts and tribunals. His delegation agreed with the Group of Legal Experts as to the difficulties of such an option with respect to crimes committed in peacekeeping operations. It was unlikely that those crimes would fall into the category of grave crimes, and in any case it would be desirable for the perpetrators to be tried in national courts.

41. His delegation welcomed in principle the elaboration of a draft convention on the criminal accountability of United Nations officials and experts on mission and thought that the draft proposed in annex III to the report (A/61/980) represented an adequate basis for further elaboration and enrichment in order to address the question of accountability in a comprehensive manner. The Committee could establish a working group to consider the draft.

Agenda item 76: Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (*continued*) (A/C.6/61/L.5)

42. **Ms. Sotaniemi** (Finland), introducing draft resolution A/C.6/61/L.5, said that, in addition to the 44 sponsors listed in the draft resolution, Madagascar, the Netherlands, Peru, the Russian Federation and the former Yugoslav Republic of Macedonia had also become sponsors. Attacks worldwide were a continuing reminder of the need to demonstrate the commitment of Member States to act upon violations of the security and the safety of diplomatic and consular missions and representatives and prevent future attacks. In order to raise awareness of the problem, States were urged to comply with the reporting procedures. There were technical updates in footnote 1 and paragraph 13, but the only substantive changes were the inclusion of the phrase "including during a period of armed conflict" in paragraphs 3 and 4. A need had been noticed for a concordance of all the official languages. The sponsors hoped that the resolution could be adopted by consensus.

43. **Mr. Kanu** (Sierra Leone), **Mr. Sifana** (Burkina Faso), **Mr. Stastoli** (Albania), **Mr. Gümrükçü** (Turkey), **Mr. Zinsou** (Benin), **Mr. Tchatchouwo** (Cameroon), **Mr. Baldé** (Guinea), **Mr. Quesada López** (Honduras) and **Mr. Muhumuza** (Uganda) said that their delegations wished to become sponsors of the resolution.

44. *Draft resolution A/C.6/61/L.5 was adopted.*

The meeting rose at 12.55 p.m.

United Nations A/C.6/61/SR.21

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Sixty-first session

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Sixth Committee

Summary record of the 21st meeting
Held at Headquarters, New York, on Thursday, 9 November 2006, at 10 a.m.

Chairman: Mr. Gómez Robledo ..... (Mexico)

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Organization of work

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06-60888 (E)

The meeting was called to order at 10.15 a.m.

Agenda item 148: Report of the Committee on Relations with the Host Country (A/61/26, A/C.6/61/L.11)

1. **Mr. Mavroyiannis** (Cyprus), Chairman of the Committee on Relations with the Host Country, introducing the Committee's report (A/61/26), said that the topics dealt with by the Committee included use of motor vehicles, parking and related matters, acceleration of immigration and customs procedures, entry visas issued by the host country, host country travel regulations, and a question of privileges and immunities. The Committee's recommendations and conclusions were contained in chapter IV of the report. The Committee on Relations with the Host Country was the only forum with the exclusive mandate to address issues arising between Member States and the host country. The equal standing of all its members, the opportunity afforded to observers to voice concerns and the consensual nature of its proceedings had served to legitimize its results.

2. Speaking as the representative of Cyprus, he introduced draft resolution A/C.6/61/L.11 on the report of the Committee on Relations with the Host Country on behalf of the sponsors. He observed that the draft resolution endorsed the Committee's recommendations contained in paragraph 86 of its report. Among other things, it urged the host country to continue to take appropriate action, such as training of relevant officials, to maintain respect for privileges and immunities and ensure that violations were remedied in accordance with applicable law; noted the decision of the Committee on Relations with the Host Country to conduct another review of the implementation of the Parking Programme for Diplomatic Vehicles; requested the host country to consider removing the remaining travel restrictions imposed on staff of certain missions and staff members of the Secretariat of certain nationalities and noted the removal of some of those restrictions during the reporting period; and noted the Committee's anticipation that the host country would enhance efforts to ensure timely issuance of entry visas to representatives of Member States.

3. **Ms. Sotaniemi** (Finland), speaking on behalf of the European Union; the acceding countries Bulgaria and Romania; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Liechtenstein, Norway, Moldova and Ukraine; said that the Committee on Relations with the Host Country continued to serve as an important and necessary venue for addressing the issues and problems that missions accredited to the United Nations might face. The European Union wished to express its appreciation to the host country for its continuous efforts to accommodate the needs and requirements of the vast diplomatic community in New York and remained assured of its commitment to taking all measures needed to guarantee the smooth functioning of the missions.

4. The European Union noted with appreciation the questionnaire distributed by the Chairman of the Committee to all Permanent Representatives concerning the implementation of the Parking Programme. The Union considered the continuing process to review the implementation of the programme important and encouraged all missions to respond to the questionnaire.

5. The European Union fully endorsed the conclusions and recommendations of the Committee on Relations with the Host Country and was confident that, with a spirit of cooperation and full observance of international law, the issues raised could continue to be resolved in a manner agreeable to all parties concerned.

6. **Mr. Vijayan** (India) said that the Committee on Relations with the Host Country was a useful forum for addressing issues related to the functioning of Member States' missions. The open and transparent exchanges of views in the Committee had proved helpful in resolving problems. His delegation appreciated the host country's commitment to fulfilling its obligations under the relevant conventions and agreements and according facilities to the missions accredited to the United Nations to ensure their smooth functioning. The imposition of municipal taxes on diplomatic missions was one such issue to which the host country was giving due attention. The host country's undoubted right to monitor and control entry into its territory and to adopt the requisite security measures had to be reconciled with the right of delegations to participate in the work of the United Nations, while ensuring that they did not misuse their privileges and immunities. His delegation welcomed the steps taken to address the parking problems of diplomatic missions through efficient implementation of the Parking Programme for

Diplomatic Vehicles and hoped that the remaining issues, including the request for parking slots by his Mission, could be addressed soon.

7. **Ms. Ramos Rodríguez** (Cuba) emphasized the importance of the host country complying fully with the relevant provisions of the Convention on the Privileges and Immunities of the United Nations, the 1961 Vienna Convention on Diplomatic Relations and the Headquarters Agreement. The Committee's report mentioned some especially sensitive matters which had a bearing on the efficient operation of diplomatic missions to the United Nations, including travel restrictions imposed by the host country on the personnel of particular missions and on Secretariat staff of certain nationalities. In June 2006 a representative of Cuba had been unable to attend a meeting on the crime of aggression held at Princeton University, simply because a travel request had been arbitrarily and unjustifiably refused. The issuance of a visa for a Cuban national travelling to the same meeting from Havana had been unduly delayed. A travel request for a Cuban representative invited to take part in a New York seminar on the Middle East organized by the International Peace Academy in May 2006 had likewise been refused. Among the members of 40 diplomatic missions to the United Nations invited to the seminar the Cuban representative had been the only one prevented from attending. Diplomats from Cuba working in New York were restricted to an area within a 25-mile radius. It was deeply regrettable that the host country authorities were continuing, on occasion, to refuse their requests to travel beyond that limit for the purpose of attending meetings and events related to the work of the United Nations. That practice placed the members of the Cuban Mission at a disadvantage in the negotiation and adoption of decisions within the United Nations. As a policy, restricting the movements of Cuban diplomats and international officials of Cuban nationality working for the United Nations or accredited to it was unjust, discriminatory and politically motivated. It breached the obligations of the host country under the Headquarters Agreement, as well as the rules of customary international law relating to diplomats. She urged the host country to reconsider its position on the matter in the light of the principles of equality and non-discrimination and the general principles of international law.

8. She welcomed the Committee's decision to conduct a fresh review of the Parking Programme for Diplomatic Vehicles, which should be applied in an equitable and appropriate manner. Some of its provisions were questionable in the light of the universally accepted privileges and immunities of diplomatic missions. The Programme also represented an additional financial and bureaucratic burden for Missions and their staff. Moreover, the competent authorities had introduced measures of execution not provided for in the Programme itself.

9. **Ms. Wilcox** (United States of America) said that since 1946, her country, as host to the United Nations, had fulfilled in every respect its relevant treaty obligations and commitments under international law, and would continue to do so. The host country placed great value on the cooperation and constructive spirit shown by members of the Committee and by the observer delegations which took part in its meetings. The Parking Programme for Diplomatic Vehicles had proved to be a success, since the number of parking tickets received by diplomatic and consular officials in New York was only a fraction of what it had been before the Programme was introduced. Congestion caused by illegal parking near the United Nations had been reduced, easing conditions for residents, and the Programme had also made it easier for Permanent Representatives and their deputies to conduct mission business.

10. A few missions had reported continuing problems with some aspects of the Programme, prompting the Committee to conduct a review of its implementation during the current session of the General Assembly. Host country representatives would continue to work with the City of New York authorities to ensure that the Programme functioned as intended. Her Mission would uphold its commitments to the United Nations community, and expected all members of that community to respect local laws.

11. Concerning restrictions on private non-official travel of members of certain missions, she emphasized that they did not violate international law. The United States was not required to permit all members of missions to travel to other parts of the country, unless they did so on official United Nations business. Travel to unofficial events, such as those organized by universities, was not governed by the relevant international agreements. However, some restrictions

on travel had been modified, and in the past year some had been removed altogether.

12. *Draft resolution A/C.6/61/L.11 was adopted.*

Agenda item 75: Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (*continued*) (A/C.6/61/L.9)

13. **Mr. Makarowski** (Sweden), introducing draft resolution A/C.6/61/L.9 on behalf of the sponsors, said that it reflected new developments in international humanitarian law in that it welcomed, in paragraph 1, the universal acceptance of the Geneva Conventions of 1949 and noted the trend towards a similarly wide acceptance of the two Additional Protocols of 1977. In addition, in the preambular paragraphs attention was drawn to the recent adoption of Additional Protocol III to the Geneva Conventions, the entry into force of the Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects and the recent publication of the study entitled *Customary International Humanitarian Law* by the International Committee of the Red Cross. Also new was the sixteenth preambular paragraph calling upon Member States to disseminate knowledge of international law as widely as possible and calling on all parties to armed conflict to apply international humanitarian law. As coordinator, he greatly appreciated the understanding shown by delegations of the need for an agreed solution on the draft resolution, in some cases notwithstanding national positions or particular concerns.

14. He announced that China, Ecuador, El Salvador, Fiji, Madagascar, Malta, Mexico, Monaco, Mongolia, Namibia, Nigeria, Peru, the Russian Federation, the former Yugoslav Republic of Macedonia, Uganda, the United Republic of Tanzania and Uruguay had joined the sponsors of the draft resolution.

15. **Mr. Thiam** (Senegal) said that his delegation also wished to become a sponsor of the draft resolution as an expression of his country's attachment to the principles of international humanitarian law.

16. **Ms. Negm** (Egypt), speaking in explanation of position, said that her delegation felt it important to explain its reasons for joining the consensus on the draft resolution despite reservations about the preambular paragraph mentioning Additional Protocol III and the new emblem. That paragraph was to be taken merely as an expression of the latest developments regarding the Additional Protocols and did not in any way represent support for the new emblem. The adoption of Additional Protocol III by a vote without taking into account reservations made during the negotiations had been an unfortunate precedent. Those reservations still stood, chief among them concern that adoption of the new emblem should apply only inside Israel and not in the occupied Arab territories in Palestine or the Golan. When the memorandum of understanding between the Palestinian Red Crescent Society and the Israeli Red Star of David Society had been signed, the representatives of the Israeli Red Star of David Society had given explicit assurances that they would not operate in the occupied territories, including East Jerusalem, without consulting the Palestinian Red Crescent Society and that they would follow the same procedure with respect to the Syrian Red Crescent Society in the Golan Heights. That had not yet happened on the ground. Her delegation also continued to have reservations about amending the Statutes and the Rules of Procedure of the International Red Cross and Red Crescent Movement prior to the entry into force of Protocol III, and about the Israeli Red Star of David Society's inclusion of armed soldiers in its teams, which was a violation of International Federation of the Red Cross resolution XI of 1921. Her delegation wished to see a cessation of violations committed by the national red cross society to which the Protocol was designed to apply. But given the importance of the resolution as a whole to international humanitarian law, her delegation would not oppose it.

17. **Mr. Dolatyar** (Islamic Republic of Iran), speaking in explanation of position, said that, although his delegation joined the consensus on the draft resolution as a sign of support for international humanitarian law, it wished to record its understanding that the fourteenth preambular paragraph should not be interpreted in any way as recognition of the Israeli regime, or of its agencies and instruments.

18. *Draft resolution A/C.6/61/L.9 was adopted.*

Agenda item 33: Comprehensive review of the whole question of peacekeeping operations in all their aspects (*continued*) (A/C.6/61/L.13)

19. **Mr. Barriga** (Liechtenstein), speaking on behalf of the Bureau, introduced draft resolution A/C.6/61/L.13 concerning criminal accountability of United Nations officials and experts on mission, which was a procedural resolution recalling the establishment of a group of legal experts to provide advice on the best way to proceed in order to ensure that United Nations staff and experts on mission would never be effectively exempted from the consequences of criminal acts committed at their duty station, nor unjustly penalized. It had been decided that the Ad Hoc Committee to be established in accordance with paragraph 1 should meet from 9 to 13 April 2007.

20. **Mr. Mikulka** (Secretary of the Committee), referring to rule 153 of the rules of procedure, said that, in accordance with paragraphs 1, 2 and 3 of draft resolution A/C.6/61/L.13, the General Assembly would decide to establish an Ad Hoc Committee open to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency, for the purpose of considering the report of the Group of Legal Experts on assuring the accountability of United Nations staff and experts on mission with respect to criminal acts committed in peacekeeping operations, in particular its legal aspects. The Ad Hoc Committee would meet from 9 to 13 April 2007 and work on the topic would continue during the sixty-second session of the General Assembly. The draft text also requested the Secretary-General to provide the Ad Hoc Committee with the necessary facilities for the performance of its work.

21. Pursuant to paragraphs 1, 2 and 3, it was envisaged that the Ad Hoc Committee would meet for five days. That meant a total of 10 meetings with simultaneous interpretation in all six languages. Document requirements would be 45 pages pre-session, 25 pages in-session and 16 pages post-session to be issued in all six languages.

22. The conference-servicing requirements for the Ad Hoc Committee were estimated to be US$ 286,843 at current rates. Those requirements were already included in the total meeting-servicing resources already planned and budgeted for the subsidiary bodies of the Sixth Committee for the biennium 2006-2007. Hence no additional resources would be required and the adoption of the draft resolution would have no financial implications under the programme budget for the biennium 2006-2007.

23. *Draft resolution A/C.6/61/L.13 was adopted.*

Agenda item 78: Report of the International Law Commission on the work of its fifty-eighth session (*continued*) (A/C.6/61/L.14, 15 and 16)

Draft resolution A/C.6/61/L.14

24. **Mr. Onisii** (Romania), speaking on behalf of the Bureau, introduced draft resolution A/C.6/61/L.14 concerning the report of the International Law Commission on the work of its fifty-eighth session and said that it followed the pattern of similar draft resolutions adopted in previous years. He drew attention to its provisions.

25. **Mr. Fitschen** (Germany), speaking in explanation of position, said that, while his delegation would, of course, join the consensus on the draft resolution, it was disappointed that the proposal it had made regarding a future topic of work for the International Law Commission had not been included in the draft resolution.

26. Although the proposal had been presented before expiry of the deadline for submitting amendments, the reason given for its non-inclusion was that it had been submitted too late for consideration in the limited time available before the scheduled adoption of the draft resolution. His delegation had, however, suggested the topic in one of its statements during the debate on the Commission's report and during the interactive dialogue between the Committee and the Commission, where it had received the support of many Member States and Commission members.

27. His delegation had been under the impression that the very purpose of the interactive dialogue had been to float ideas and draw some practical conclusions to guide the Commission at the start of the new quinquennium. There was little point in holding a debate between advisers from Governments and Commission members on the deliberations of the Commission on the very day the draft resolution concerning the work of the Commission had to be presented, if the outcome of such a debate could not then be reflected in the draft text.

28. That state of affairs confirmed the findings of the interactive debate, which had led to the recommendation that the Committee should seriously reconsider the ways it dealt with and took decisions on the work of the International Law Commission. Paragraph 11 of the draft resolution rightly welcomed the enhanced dialogue between the International Law Commission and the Sixth Committee. The question of the timing of the debate and the presentation of the resolution on it was one issue where that recommendation ought to be put into practice.

29. **The Chairman** said that he would make it his duty to transmit the conclusions of the interactive debates to the International Law Commission, in writing, in a timely fashion.

30. *Draft resolution A/C.6/61/L.14 was adopted.*

Draft resolution A/C.6/61/L.15

31. **Mr. Onisii** (Romania), speaking on behalf of the Bureau, introduced draft resolution A/C.6/61/L.15 concerning diplomatic protection and drew attention to its contents.

32. **The Chairman** said that paragraph 2 of the draft resolution invited Governments to submit comments concerning the Commission's recommendation that a convention should be elaborated on the basis of the draft articles on diplomatic protection. It was crucial that Governments should take up that invitation in order to improve the dialogue between the Sixth Committee and the International Law Commission.

33. *Draft resolution A/C.6/61/L.15 was adopted.*

Draft resolution A/C.6/61/L.16

34. **Mr. Onisii** (Romania), speaking on behalf of the Bureau, introduced draft resolution A/C.6/61/L.16 concerning allocation of loss in the case of transboundary harm arising out of hazardous activities and drew attention to its contents.

35. *Draft resolution A/C.6/61/L.16 was adopted.*

Agenda item 118: Programme planning

36. **The Chairman** said that the Committee on Programme and Coordination had already approved the section "Legal Affairs" of the biennium programme plan for the period 2008-2009. The Committee did not, therefore, need to take any action on that item at the current stage. If he heard no objections, he would take it that the Committee had concluded its consideration of the item.

37. *It was so decided.*

Agenda item 100: Measures to eliminate international terrorism (*continued*)

Oral report by the Chairman of the Working Group

38. **Mr. Perera** (Sri Lanka) recalled that at its seventh meeting the Committee had decided to establish a working group to continue to carry out the mandate of the Ad Hoc Committee, established by General Assembly resolution 51/210 of 17 December 1996, as contained in General Assembly resolution 60/43 of 8 December 2005. The Working Group was open to all States Members of the United Nations, of the specialized agencies or of the International Atomic Energy Agency. Its Chairman had to keep it informed of the outcome of his bilateral contacts with delegations on the draft comprehensive convention on terrorism and on the convening of the high-level conference, to be held under the auspices of the United Nations, to formulate a joint organized response of the international community to all forms of terrorism. The Working Group had held one plenary meeting, on 3 November 2006, at which it had had before it the reports of the Ad Hoc Committee on its sixth and tenth sessions (A/57/37 and Corr.1, A/61/37) and the report of the Working Group of the Sixth Committee convened during the sixtieth session of the General Assembly (A/C.6/60/L.6). It had also had before it two letters from the Permanent Representative of Egypt, one addressed to the Secretary-General (A/60/329) and the other to the Chairman of the Sixth Committee (A/C.6/60/2). All proposals by delegations concerning the draft comprehensive convention remained on the table for consideration by the Working Group. On 11 and 12 October 2006, as Chairman, he had briefed the Working Group on his bilateral contacts on that subject and on the convening of the high-level conference. He had also met with the President of the General Assembly, who had underlined the importance of working towards finalizing the draft comprehensive convention as a matter of priority.

39. Although no new proposals had emerged during the bilateral contacts, he was encouraged by the positive attitude shown by delegations. Some of them had alluded to the adoption of the global counter-

terrorism strategy as proof of the potential for a consensus solution on the outstanding issues concerning the draft convention. Delegations had expressed their wish to convene a session of the Ad Hoc Committee in the spring of 2007, with informal contacts continuing in the meantime. Intensive informal work would be needed among delegations in order to generate texts to pave the way for an overall agreement on the draft convention.

40. In seeking to reach a consensus on the draft convention, it was generally understood that agreement on draft article 18 was the key to an overall agreement. Achieving such agreement would depend on drawing a clear distinction between the criminal law regime to be established under the draft convention, and international humanitarian law. However, more time was needed to work on new proposals to build upon the language of draft article 18, while preserving its integrity. Emphasis had been placed on preserving, in the drafting process, the *acquis* of the existing law and practice, as reflected in the various sectoral counter-terrorism instruments. It had also been argued that a draft comprehensive convention should cover all existing legal gaps and situations, including acts by armed forces of a State which were not governed by international humanitarian law. The proposal currently on the table in that regard in the context of draft article 2 (A/60/37, annex III A), should be considered alongside issues relating to draft article 18.

41. During the bilateral contacts, some delegations had expressed the view that the convening of a high-level conference should be considered only after agreement had been reached on the draft comprehensive convention, on the understanding that such a conference would help to enhance international cooperation in combating international terrorism. However, other delegations felt that the two issues should not be linked.

42. In order to explore ways of overcoming the existing differences on the draft convention, delegations should work assiduously during the intersessional period on possible compromise texts.

Organization of work

43. **The Chairman** said that the Committee was not yet in a position to take action on draft resolution A/C.6/61/L.17 concerning agenda item 100. Nor could it yet take action on draft resolution A/C.6/61/L.10, concerning agenda item 79, or on draft resolution A/C.6/61/L.18, concerning agenda item 80. Agenda item 110 would be considered at a later stage. He had requested the approval of the President of the General Assembly for the work of the Committee to be extended beyond the target date originally envisaged.

The meeting rose at 11.50 a.m.

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Sixth Committee

Summary record of the 22nd meeting
Held at Headquarters, New York, on Thursday, 16 November 2006, at 4.30 p.m.

Chairman: Mr. Gómez Robledo ..... (Mexico)

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06-60894 (E)

The meeting was called to order at 5 p.m.

Agenda item 79: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/61/L.10 and Corr.1)

1. **Ms. Negm** (Egypt), introducing draft resolution A/C.6/61/L.10 and Corr.1 on behalf of the Bureau, said that the text was based on the resolution adopted at the previous session but incorporated a number of changes. The tenth preambular paragraph and operative paragraph 3 referred to the recent adoption of the revised working papers on the working methods of the Special Committee. Paragraph 8 requested the Secretary-General to distribute, in due course, the advisory opinions requested by the principal organs of the United Nations as official documents of the United Nations. Paragraph 11 had been introduced to reiterate the responsibility of the Secretary-General for the quality of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and to request him to continue to follow the modalities outlined in paragraphs 102 to 106 of his report of 18 September 1952 (A/2170). Paragraph 15 had been introduced to request the Secretary-General to submit to the Special Committee for its consideration the information referred to in paragraph 12 of his report on implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/61/304).

2. **Mr. Mikulka** (Secretary of the Committee), referring to the programme budget implications of the draft resolution, said that, under the terms of paragraph 2, the Special Committee would hold its next session from 7 to 16 February 2007. It would hold a total of 14 meetings with simultaneous interpretation in all six languages. Twenty-five pages of pre-session, 55 pages of in-session and 55 pages of post-session documentation would be required, to be issued in all six languages. The total cost for conference servicing and documentation for the session was estimated at $433,252 at current rates. Since the session had already been programmed in the calendar of conferences and meetings for 2007, no additional resources would be required.

3. The cost of distributing the advisory opinions of the International Court of Justice in all six official languages, in accordance with paragraph 8 of the draft resolution, was estimated at $427,770 at current rates. It was understood that the advisory opinions would be distributed as and when capacity became available. Therefore, implementation of paragraph 8 would not entail any additional financial implications.

4. *Draft resolution A/C.6/61/L.10 and Corr.1 was adopted.*

5. **Mr. Fitschen** (Germany), speaking in explanation of position, noted that the list of documents in footnote 6, which pertained to paragraph 4 (b) of the draft resolution, did not include the latest relevant report of the Secretary-General (A/61/304). That paragraph set out the terms of reference for the future work of the Special Committee, and the omission of the aforementioned document might be taken as a deliberate exclusion. His delegation had not pressed for a formal amendment of the text because it had wished to avoid delaying the completion of the Committee's work. It had therefore joined the consensus on the draft resolution on the understanding that neither any delegation nor the Committee as a whole would be precluded from considering or referring to the document in the future.

6. **Mr. Tajima** (Japan), speaking in explanation of position, said that, while his Government supported the request for distribution of the advisory opinions of the International Court of Justice under the terms of paragraph 8 of the draft resolution, the introduction of a new mechanism could have budget implications. The ongoing need for more efficient use of resources within the context of United Nations reform should be borne in mind. His delegation welcomed the Secretary's statement in that regard and wished to stress that it had joined the consensus on the draft resolution on the understanding that it would be implemented within existing resources.

Agenda item 80: The rule of law at the national and international levels (*continued*) (A/C.6/61/L.18)

7. **The Chairman**, introducing draft resolution A/C.6/61/L.18, suggested that the words "for submission at its sixty-third session" should be added after the words "national and international levels" in paragraph 2. In connection with paragraph 5, it had been the Committee's understanding in its informal consultations that the incoming Chairman of the Committee would hold consultations with Member

States with a view to identifying issues to be addressed under the subtopics chosen for discussion, including the methodology for such discussions.

8. He suggested that, pursuant to rule 120 of the rules of procedure of the General Assembly, the Committee should waive the 24-hour requirement in order to proceed with action on the draft resolution.

9. *It was so decided.*

10. **Mr. Mikulka** (Secretary of the Committee), referring to the programme budget implications of the draft resolution, said it was understood that the interim report mentioned in paragraph 2 would not exceed the 16-page limit prescribed for reports of the Secretary-General. Therefore, no additional cost would be involved. Paragraph 2 also envisaged that an inventory would be issued in all six languages at the sixty-third session. The estimated cost for implementation of that provision was $311,329 at current rates. That requirement would be considered in the context of the preparation of the proposed programme budget for the biennium 2008-2009. Adoption of the draft resolution would not, therefore, give rise to financial implications under the programme budget for the biennium 2006-2007.

11. **The Chairman** said it was the Committee's understanding that the interim report mentioned in paragraph 2 of the draft resolution would contain as complete an inventory as possible within existing resources.

12. **Mr. Tajima** (Japan), speaking in explanation of position, requested confirmation that the report mentioned in paragraph 3 of the draft resolution could be prepared by using the Secretariat's existing capacity and would not, therefore, involve any additional costs. Without such an assurance, his delegation would not be able to join the consensus on the draft resolution.

13. **Mr. Mikulka** (Secretary of the Committee) said that, as his statement had been delivered on behalf of the Secretary-General, he was not at liberty to interpret it. However, he reiterated that the adoption of draft resolution A/C.6/61/L.18 would not give rise to financial implications under the programme budget for the biennium 2006-2007.

14. *Draft resolution A/C.6/61/L.18, as orally revised, was adopted.*

15. **Mr. Elji** (Syrian Arab Republic), speaking in explanation of position, said it was his delegation's understanding that the views of Member States that were to be sought by the Secretariat under the draft resolution would not be limited to the specific issues mentioned. Legal questions were highly complex, and it was for Member States to impose limits, if any, on the scope of the relevant agenda item.

16. Referring to the comments made by the representative of Japan, he said that his delegation objected to the raising of financial issues before the Sixth Committee, since the Committee was a legal and not a financial body.

17. **Ms. Rivero** (Uruguay), speaking in explanation of position, said that her delegation had joined the consensus on the draft resolution on the basis of the English text. The Spanish version, however, required some editorial changes.

18. **The Chairman** requested the representative of Uruguay to submit the necessary changes to the Secretariat.

19. **Mr. Tajima** (Japan), speaking in explanation of position, welcomed the Secretary's assurance that the adoption of the draft resolution had no financial implications at the current stage. However, his delegation might raise the issue again in an appropriate forum.

Item 128: Administration of justice at the United Nations (*continued*) (A/C.6/61/L.12)

20. **The Chairman** said that, pending the views of the Secretary-General on the subject, expected to be communicated in March 2007, the Bureau had prepared a draft decision on the item (A/C.6/61/L.12), in the light of consultations with delegations, which he had further revised to read: "The Sixth Committee decides to hold a resumed session of 10 meetings in March 2007, to continue the consideration of the legal aspects of the report of the Redesign Panel on the United Nations system of administration of justice (A/61/205), taking into account, as appropriate, the comments that will be made by the Secretary-General on the report of the Redesign Panel as well as those that may be made by the Advisory Committee on Administrative and Budgetary Questions (ACABQ)." The purpose of the changes to the original draft decision was to focus on the legal aspects and to allow for the possibility that ACABQ might wish to convey its views on the matter

to the Committee. The Committee did not usually resort to resumed sessions but did so only when it was warranted by special circumstances, as in the present case .

21. **Mr. Mikulka** (Secretary of the Committee) observed that pursuant to the draft decision, the Committee would hold 10 meetings with simultaneous interpretation and summary records in all six languages. Fifteen pages of in-session and 25 pages of post-session documentation would be required, to be issued in all six languages. The conference-servicing requirements for the resumed session of the Committee were estimated to be $388,577 at current rates. That was covered by part of the total meeting-servicing resources already planned and budgeted for the Committee or its subsidiary bodies for 2006-2007 and the draft decision, as orally revised, therefore contained no programme-budget implications for that biennium.

22. **Mr. Elji** (Syrian Arab Republic) said that, as the report of the Redesign Panel had not yet been submitted to the Sixth Committee, it was not correct to say that the Committee would continue its consideration of it. Moreover, as the report had been requested by the Fifth Committee, the Fifth Committee should have some say in the matter, without prejudice to the work of the Sixth Committee. He wondered how any comments by ACABQ, which would not reflect legal considerations, would affect or enrich the work of the Sixth Committee. Other reports might also be submitted under the item, in particular on the views of staff members. He proposed that the draft decision, as orally revised, should be amended to read: "The Sixth Committee decides to hold a resumed session of 10 meetings in March 2007, to continue the consideration of the agenda item on the system of administration of justice at the United Nations."

23. **The Chairman** said it was his understanding that the Fifth Committee would also consider the report at its first resumed session. Since the Secretary-General would not be able to submit comments on the report, particularly on its financial aspects, before March, he had wished to make it clear, through his revision, that the Sixth Committee would concentrate on its legal aspects.

The meeting was suspended at 5.40 p.m. and resumed at 6 p.m.

24. **The Chairman** suggested that, following consultation, the draft decision, as orally revised, should be further amended to reflect the fact that the Committee had not yet begun to consider the report. The first part of the draft decision should therefore read: "The Sixth Committee decides to hold a resumed session of 10 meetings in March 2007, to consider the legal aspects of the report of the Redesign Panel ...". The rest of the draft decision would remain unchanged.

25. *Draft decision A/C.6/61/L.12, as orally revised and amended, was adopted.*

26. **Ms. Wilcox** (United States of America), speaking in explanation of position, said that the United States looked forward to further discussions in the Fifth and Sixth Committees on the administrative and budgetary aspects and the legal aspects, respectively, of the report of the Redesign Panel on the United Nations system of administration of justice, together with the comments of the Secretary-General and ACABQ. The reform of the United Nations system of administration of justice was a matter of great importance and complexity that would affect the Organization and its staff for the next generation. The Committee must therefore proceed with care and reach reasoned conclusions only after due consideration of the issues involved. Her delegation had substantive concerns about the report and saw the resumed session as an opportunity to begin the work of discussing the report but not necessarily of concluding its consideration of the item. She appreciated the Chairman's assurances regarding the resumed session; it was a departure from the Committee's usual practice and should not set a precedent for the future.

27. **Mr. Elji** (Syrian Arab Republic), speaking in explanation of position, said that the question of improvements in the United Nations system of administration of justice had been neglected all too long; it was time to ensure justice for the staff of the Organization. Indeed, that had been one of the main pillars of the reform of human resources management proposed by the Secretary-General; but no substantive action had yet been taken in that regard, even though optimum use of the staff depended on a system of administration of justice in accordance with international norms. He welcomed the inclusion of the item in the agenda of the Sixth Committee, as that would make it possible to consider the legal aspects of the question, as duly reflected in the draft decision. However, that should not restrict the Fifth Committee's

consideration of the item nor be construed to mean that the Fifth Committee would consider the report before the Sixth; their respective Bureaux should decide between them how to proceed, having regard also to other reports that might be submitted under the item, particularly concerning the views of the staff, which should be taken into consideration.

28. **The Chairman** invited the members of the Committee to join him in paying tribute to Mr. Mikulka, Secretary of the Committee, who on 1 March 2007 would take up new responsibilities in the Office of Legal Affairs as Director of the Division for Ocean Affairs and the Law of the Sea. Mr. Mikulka had been involved in the Committee's work for many years, as his country's representative, as the Chairman of the Committee and as its Secretary, and had made an invaluable contribution to the work of the Bureau and of the Committee as a whole. On behalf of the Committee, he expressed deep appreciation of his long-standing services and wished him every success in his new assignment.

The meeting rose at 6.15 p.m.

United Nations A/C.6/61/SR.23

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Sixty-first session

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Sixth Committee

Summary record of the 23rd meeting
Held at Headquarters, New York, on Tuesday, 21 November 2006, at 10 a.m.

Chairman: Mr. Gómez Robledo ..... (Mexico)

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06-62501 (E)

The meeting was called to order at 10.20 a.m.

Agenda item 100: Measures to eliminate international terrorism (*continued*) (A/C.6/61/L.17)

1. **Mr. Adsett** (Canada), introducing draft resolution A/C.6/61/L.17, explained that it was an updated version of the resolution adopted the previous year on the same subject (A/RES/60/43). A new second preambular paragraph reaffirmed the United Nations Global Counter-Terrorism Strategy, adopted on 8 September 2006. The twenty-first preambular paragraph took note of recent developments and initiatives at the international, regional and subregional levels, including initiatives by a number of organizations. The twenty-fourth preambular paragraph had been updated to include a reference to the Fourteenth Conference of Heads of State or Government of Non-Aligned Countries, held in September 2006. Paragraph 2 called upon all Member States, the United Nations and other appropriate international, regional and subregional organizations to implement the Global Counter-Terrorism Strategy. Paragraph 3 recalled the pivotal role of the General Assembly in following up the implementation of the Strategy. Paragraph 19 welcomed the publication by the Secretariat of the second edition of *International Instruments related to the Prevention and Suppression of International Terrorism*. Paragraph 22 set forth the General Assembly decision that the Ad Hoc Committee should continue its elaboration of the draft comprehensive convention on international terrorism and should continue to discuss the question of convening a high-level conference on the question under the auspices of the United Nations. According to paragraph 23, the Ad Hoc Committee would meet on 5, 6 and 15 February 2007 for that purpose. Within the two-week period 5-16 February 2007, meetings would be scheduled so as to allow delegations sufficient flexibility for any informal consultations that might be convened to facilitate discussion of issues within the Ad Hoc Committee's mandate.

2. The text of the draft resolution had been produced after numerous and extensive consultations. Having drawn attention to a number of minor editorial changes still to be made to the text of the draft resolution, he recommended its adoption without a vote.

3. **Mr. Al-Obaidli** (Qatar), supported by **Mr. Al-Naqbi** (United Arab Emirates) said the list of organizations in the twenty-first preambular paragraph should include the Gulf Cooperation Council.

4. **Mr. Dolatyar** (Islamic Republic of Iran) said his delegation had not seen the list of organizations in the twenty-first preambular paragraph before the text of the draft resolution was finalized. It appeared that some of the organizations were of a military nature. He would therefore need to consult with other delegations before approving the text.

5. **The Chairman** said that since a similar request had been received from another quarter, he would be willing to suspend the meeting for a short interval to permit consultations to be held.

The meeting was suspended at 10.35 a.m. and resumed at 10.45 a.m.

6. **Mr. Dolatyar** (Islamic Republic of Iran) recalled that the purpose of including a paragraph on initiatives by regional organizations was to help in approaching the question of terrorism in a comprehensive manner and in conditions conducive to the suppression of terrorism. Including initiatives by organizations of a military nature would not be helpful for that purpose, and could be misinterpreted. In the discussion he had just held with some other delegations, it had been agreed that none of them would stand in the way of a consensus on the draft resolution, but that they would have to dissociate themselves from some of the wording used in the twenty-first preambular paragraph.

7. **Mr. Lamine** (Algeria) said that not all the organizations mentioned in the twenty-first preambular paragraph were engaged in preventing and suppressing terrorism.

8. **Mr. Elji** (Syrian Arab Republic) said the inclusion of a "group" or "groups" in that paragraph would in effect mean that any entity at all could be designated as having taken initiatives to prevent and suppress terrorism. He recalled that when the text of the draft resolution was being prepared, delegations had been invited to suggest organizations for inclusion in the paragraph in question. However, organizations with a military function and without any legislative authority should not be included. His delegation would not oppose a consensus decision on the draft resolution, but he emphasized that the phrase "taking note" in the twenty-first preambular paragraph was

entirely neutral and should not be construed as an endorsement of what followed. Indeed, that was the construction given to that phrase by the General Assembly itself. Accordingly, mention of certain organizations did not confer any legitimacy on their actions.

9. All the organizations mentioned in the paragraph should be given their full official titles and should appear in alphabetical order in every language version of the text, including the Arabic version.

10. Concerning the publication mentioned in paragraph 19, it was important to publish it in all the official languages, at least in any edition subsequent to the second. The General Assembly, in a recent resolution on the pattern of conferences (A/RES/58/250), had given the Secretary-General a mandate to follow the rules concerning simultaneous distribution of documents in all official languages with respect to the posting of parliamentary documentation.

11. **Mr. Samy** (Egypt) expressed regret that he had been unable to review beforehand the list of organizations contained in the twenty-first preambular paragraph; that list should not set a precedent. At the Committee's next session, clear criteria should be established for the purpose and military organizations should not be included in the list.

12. **Ms. Ramos Rodríguez** (Cuba) said that governmental organizations that had taken action to combat terrorism should have been included in the list, which she too would have wished to see in advance. She noted the neutral language used but nevertheless expressed reservations regarding the inclusion of military organizations and agreed that it should not set a precedent. Moreover, inclusion of an organization in the list did not imply any recognition of its contribution to the fight against terrorism.

13. **Mr. Shah** (Pakistan) said that the paragraph in question contained inconsistencies but that all delegations had moved forward in a positive spirit in order to achieve a consensus on the draft resolution. The concerns expressed in that regard should not, therefore, stand in the way of such a consensus.

14. *Draft resolution A/C.6/61/L.17, as orally revised and amended, was adopted.*

15. **Mr. Ben Lagha** (Tunisia), speaking in explanation of position, said that mention was made in the twenty-fourth preambular paragraph of international initiatives in response to terrorism. His delegation had proposed such an initiative, namely, the elaboration of an international code of conduct to combat terrorism under the auspices of the United Nations. Member States would be invited to accede freely to the proposed code of conduct, which would set out a number of relevant internationally recognized rules and principles. The African Union, the Movement of Non-Aligned Countries and the Organization of the Islamic Conference supported that initiative.

Agenda item 110: Revitalization of the work of the General Assembly (A/C.6/61/L.19)

16. **The Chairman** said that the Bureau had prepared a programme of work for the Committee at its sixty-second session, contained in draft decision A/C.6/61/L.19. The programme of work was merely provisional and was intended to help delegations and the Secretariat to prepare for the next session; it might need to be adjusted in the light of progress made during the Committee's resumed session in March 2007.

17. *Draft decision A/C.6/61/L.19 was adopted.*

18. **Mr. Elji** (Syrian Arab Republic), speaking in explanation of position, stressed that, while adjustments could be made to the programme of work in the light of progress during the resumed session, that programme of work had to be adopted at the beginning of the Committee's work. The Committee's deliberations on the regularly recurring item of the revitalization of the work of the General Assembly were somewhat opaque. All draft texts should be coordinated by the Chairman or his representative. Some draft resolutions had, however, been coordinated at the national level by delegations, which ran counter to the principle of consensus. The Fifth Committee maintained full transparency in its work and its example should therefore be followed.

19. **The Chairman** said that draft decision A/C.6/61/L.19 had been available in all language versions since 10 November. He reiterated that it contained a provisional programme of work and that, in accordance with the Committee's customary practice, the next Bureau, to be elected in June 2007, would make any necessary adjustments. The Committee generally worked on the basis of consensus, not only in regard to matters of organization and scheduling but also on substantive issues, with every

care to ensure transparency; the current session was no exception. Draft resolutions could be submitted equally by delegations, the Chairman or any other member of the Bureau.

20. **Mr. Elji** (Syrian Arab Republic) recognized the Chairman's transparent conduct of the Committee's deliberations. He had merely wished to stress that the programme of work would need to be formally adopted at the next session, following consultations among the regional groups. While draft resolutions could be submitted by individual delegations, they had to be coordinated by the Chairman or another member of the Bureau in an open manner, and not at the national level. True consensus required that all delegations be consulted.

Agenda item 5: Election of the officers of the Main Committees

21. **The Chairman** recalled that, in accordance with rules 99 (a) and 103 of the rules of procedure of the General Assembly, as amended by General Assembly resolutions 56/509 and 58/126, the Main Committees should elect a Chairman and full Bureau three months before the opening of the next session. He therefore suggested that the regional groups should hold consultations at least three months before the opening of the sixty-second session of the General Assembly so as to enable the Committee to elect its officers at the appropriate time.

22. *It was so decided.*

Closure of the work of the Sixth Committee during the main part of the sixty-first session of the General Assembly

23. The Chairman declared that the Committee had completed its work for the main part of the sixty-first session of the General Assembly.

The meeting rose at 11.15 a.m.